

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1978

By: Leist of the House

and

Easley of the Senate

COMMITTEE SUBSTITUTE

[environment and natural resources - Environmental
Quality Code -

emergency]

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

SECTION 1. AMENDATORY 27A O.S. 2001, Section 2-6-101, is amended to read as follows:

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

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

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

~~3.~~ 2. "Drainage basin" means all of the water collection area adjacent to the highest water line of a reservoir which may be considered by the Department to be necessary to protect adequately the waters of the reservoir. The area may extend upstream on any watercourse to any point within six hundred (600) feet of the highest water line of the reservoir;

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

~~5.~~ 3. "Indirect discharge" means the introduction of pollutants to a publicly owned treatment works from a nondomestic source;

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

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

~~8.~~ 4. "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agribusiness waste discharged into waters of the state;

~~9.~~ 5. "Public water supply" means water supplied to the public for domestic or drinking purposes;

~~10.~~ 6. "Reservoir" means any reservoir, whether completed or in the process of construction, whether or not used as a water supply, and whether or not constructed by any recipient of water therefrom;

~~11.~~ 7. "Sludge" means nonhazardous solid, semi-solid, or liquid residue generated by the treatment of domestic sewage or wastewater by a treatment works, or water by a water supply system, or manure, or such residue, treated or untreated, which results from industrial, nonindustrial, commercial, or agribusiness activities or industrial or manufacturing processes and which is within the jurisdiction of the Department;

~~12.~~ 8. "Small public sewage system" ~~shall mean~~ means a disposal or collection system which serves less than ten (10) residential units or a public or commercial sewage system which has an average flow of less than five thousand (5,000) gallons per day;

~~13. "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;~~

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

~~15. "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 and which is within the jurisdiction of the Department;~~

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

~~17. "Wastewater treatment" means any method, technique or process used to remove waste, 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. "Treatment" also means any method, technique or process used in the purification of drinking water;~~

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

~~19.~~ 10. "Water supply system" means a water treatment plant, water wells, and all related pipelines or conduits, pumping stations and mains and all other appurtenances and devices used for distributing drinking water to the public and, as such, shall be synonymous with waterworks;

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

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

SECTION 2. AMENDATORY 27A O.S. 2001, Section 2-6-206, is amended to read as follows:

Section 2-6-206. A. Whenever there are reasonable grounds to believe that there has been a violation of any of the provisions of the Oklahoma Pollutant Discharge Elimination System Act, any permit, any rule, or any order of the Executive Director, the Executive Director shall have the authority and powers to proceed as specified in the Administrative Procedures Act unless otherwise provided herein. Provided, however, that provisions of this section for written notice, enforcement hearing, and administrative orders shall not be conditions precedent for the Department to seek action in the district court as provided by the Oklahoma Pollutant Discharge Elimination System Act or other applicable provisions of law.

B. The Oklahoma Pollutant Discharge Elimination System Act shall not in any way impair or in any way affect a person's right to recover damages for pollution in a court of competent jurisdiction. Any person having any interest connected with the geographic area or waters or water system affected, including but not limited to any aesthetic, recreational, health, environmental, pecuniary or property interest, which interest is or may be adversely affected, shall have the right to intervene as a party in any administrative proceeding before the Department, or in any civil proceeding, relating to violations of the Oklahoma Pollutant Discharge Elimination System Act or rules, permits or orders issued hereunder.

C. Whenever on the basis of any information available, the Department finds that any person or entity regulated by the Department is in violation of any act, rule, order, permit, condition or limitation implementing the Oklahoma Pollutant Discharge Elimination System Act, or any previously issued discharge permit, the Executive Director shall issue an order requiring such person or entity to comply with such provision or requirement, commence appropriate administrative enforcement proceedings, or bring a civil action. Provided, however, the issuance of a compliance order or suspension or revocation of a permit shall not be considered a condition precedent to the accrual or imposition of penalties or fines in any administrative, civil or criminal proceeding.

D. A copy of any order issued pursuant to this section shall be sent immediately to the violator. In any case in which an order or notice to a violator is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers.

Any order issued pursuant to this section shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty (30) days in the case of a violation of an interim compliance schedule or operation

and maintenance requirement and not to exceed a reasonable time in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Any order or notice issued by the Executive Director may be served in any manner allowed by Oklahoma Rules of Civil Procedures applicable to a civil summons.

E. Whenever on the basis of any information available the Executive Director finds that any person regulated by the Department has violated any of the provisions of the Oklahoma Pollutant Discharge Elimination System Act, or any permit, rule, order or condition or limitation implementing any of such sections, or previously issued discharge permit or related order, the Executive Director may, after providing notice and opportunity for an enforcement hearing to the alleged violator, assess an administrative fine of not more than Ten Thousand Dollars (\$10,000.00) per day of violation, for each day during which the violation continues. The total amount of such fine shall not exceed One Hundred Twenty-five Thousand Dollars (\$125,000.00) per violation. In determining the amount of any penalty assessed under this subsection, the Executive Director shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit savings, if any, resulting from the violation, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation. Enforcement hearings shall be conducted in accordance with the procedures set out in the Administrative Procedures Act.

F. 1. The Executive Director is authorized to commence a civil action for appropriate relief, including a permanent or temporary

injunction, for any violation for which he is authorized to issue a compliance order under subsection C of this section.

2. Any person who violates any provision of the Oklahoma Pollutant Discharge Elimination System Act, or any permit condition or limitation implementing any of such provisions in a permit issued under the Oklahoma Pollutant Discharge Elimination System Act, or any requirement imposed in a pretreatment program approved under the Oklahoma Pollutant Discharge Elimination System Act, and any person who violates any order issued by the Executive Director under subsection C of this section, shall be subject to a civil penalty not to exceed Ten Thousand Dollars (\$10,000.00) per day for each violation. In determining the amount of the civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit, if any, resulting from the violation, any history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

3. Any action pursuant to this subsection may be brought in the district court for the district in which the property or defendant is located or defendant resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance.

4. The prior revocation of a permit shall not be a condition precedent to the filing of a civil action under the Oklahoma Pollutant Discharge Elimination System Act.

G. 1. Any person who:

- a. negligently violates any provision of the Oklahoma Pollutant Discharge Elimination System Act, or any order issued by the Executive Director hereunder, or

any permit condition or limitation in a permit issued or any requirement imposed in a pretreatment program authorized pursuant to the Oklahoma Pollutant Discharge Elimination System Act, or

- b. negligently introduces into the waters of the state or a treatment works discharging into the waters of the state any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state or local requirements or permits, which causes such treatment work to violate any effluent limitation or condition in a permit issued to the treatment works pursuant to the Oklahoma Pollutant Discharge Elimination System Act,

shall be punished by a fine of not less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more than Twenty-five Thousand Dollars (\$25,000.00) per day of violation, or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be a fine of not more than Fifty Thousand Dollars (\$50,000.00) per day of violation, or by imprisonment in the State Penitentiary for not more than two (2) years, or by both.

2. Any person who:

- a. knowingly violates any provision of the Oklahoma Pollutant Discharge Elimination System Act, or any order issued by the Executive Director hereunder, or any permit condition or limitation in a permit issued or any requirement imposed in a pretreatment program authorized pursuant to the Oklahoma Pollutant Discharge Elimination System Act, or

b. knowingly introduces into the waters of the state or a treatment works discharging into the waters of the state any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state or local requirements or permits, which causes such treatment work to violate any effluent limitation or condition in a permit issued to the treatment works under the Oklahoma Pollutant Discharge Elimination System Act, shall be punished by a fine of not less than Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00) per day of violation, or by imprisonment in the county jail for not more than one (1) year or in the State Penitentiary for not more than three (3) years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be a fine of not more than One Hundred Thousand Dollars (\$100,000.00) per day of violation, or by imprisonment in the State Penitentiary for not more than six (6) years, or by both.

3. a. Any person who knowingly violates any provision of the Oklahoma Pollutant Discharge Elimination System Act, or any permit condition or limitation in a permit issued hereunder by the Executive Director, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall upon conviction be subject to a fine of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00) or imprisonment in the State Penitentiary for not more than fifteen (15) years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject

to a fine of not more than One Million Dollars (\$1,000,000.00). If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both fine and imprisonment.

b. For the purpose of subparagraph a of this paragraph:

- (1) in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury, a person shall be responsible only for actual awareness or actual belief that he possessed, and knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant; provided however that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information,
- (2) it is an affirmative defense to prosecution under this subsection that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, business, profession or of a medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent, and such defense may be established under this subparagraph by a preponderance of the evidence.

4. Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Oklahoma Pollutant Discharge Elimination System Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Oklahoma Pollutant Discharge Elimination System Act, shall upon conviction be punished by a fine of not more than Ten Thousand Dollars (\$10,000.00), or by imprisonment for not more than two (2) years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than Twenty Thousand Dollars (\$20,000.00) per day of violation, or by imprisonment for not more than four (4) years, or by both.

5. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

H. Whenever, on the basis of information available to him, the Department finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of the Oklahoma Pollutant Discharge Elimination System Act or any requirement, rule, permit or order issued under the Oklahoma Pollutant Discharge Elimination System Act, the Department shall notify the owner or operator of such treatment works of such violation. If the owner or operator of the treatment works does not commence appropriate enforcement action within thirty (30) days of the date of such notification, the Department may commence a civil action for appropriate relief, including but not limited to a permanent or temporary injunction, against the owner or operator of such treatment works. In any such civil action the Department shall join the owner or operator of such source as a party to the action. Such action shall be brought in the district court in the county in

which the treatment works is located. Such court shall have jurisdiction to restrain such violation and to require the owner or operator of the treatment works and the owner or operator of the source to take such action as may be necessary to come into compliance with the Oklahoma Pollutant Discharge Elimination System Act. Nothing in this subsection shall be construed to limit or prohibit any other authority the Department may have under this section.

I. 1. Any person against whom an administrative compliance or penalty order is issued under this section may obtain review of such order by filing a petition for review in district court pursuant to the Administrative Procedures Act. Such court shall not set aside or remand such order unless there is not substantial evidence in the administrative record, taken as a whole, to support the finding of a violation or unless the assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the assessment of the penalty constitutes an abuse of discretion. No stay of an administrative penalty order shall be granted until the amount of penalty assessed has been deposited with the reviewing district court pending resolution of the petition for review.

2. If any person fails to pay an assessment of an administrative penalty:

- a. after the order making the assessment has become final,
or
- b. after a court in an action brought under paragraph 1 of this subsection has entered a final judgment in favor of the Department, as the case may be,

the Department may commence or may request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the

case may be. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

3. Any person who fails to pay on a timely basis the amount of an assessment of an administrative or civil penalty shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceeding and quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

SECTION 3. AMENDATORY 27A O.S. 2001, Section 2-14-304, is amended to read as follows:

Section 2-14-304. A. For draft permits or draft denials for Tier II applications on which no comment or public meeting request was timely received and on which no public meeting was held, the final permit shall be issued or denied.

B. For draft permits or draft denials for Tier II applications on which comment or a public meeting request was timely received or on which a public meeting was held, the Department, after considering the comments, shall prepare a response to comments and issue the draft permit as is, or as amended or make final denial.

The response to comments shall be prepared within ninety (90) days after the close of the public comment period unless extended by the Executive Director upon a determination that additional time is required due to circumstances outside the control of the Department. Such circumstances may include, but shall not be limited to, an act of God, a substantial and unexpected increase in the number of applications filed, additional review duties imposed on the Department from an outside source, or outside review by a federal agency.

C. For a draft permit for a Tier III application, after the public comment period and the public meeting, if any, the Department shall prepare a response to comments and either issue a final denial in accordance with paragraph 2 of this subsection or prepare a proposed permit.

1. When a proposed permit is prepared, the applicant shall publish notice, as legal notice in one newspaper local to the proposed new site or existing facility, of the Department's tentative decision to issue the permit. Such notice shall identify the places where the proposed permit and the Department's response to comments may be reviewed, including a location in the county where the proposed new site or existing facility is located and shall offer a twenty-day opportunity to request an administrative hearing to participate in as a party. The opportunity to request a hearing shall be available to the applicant and any person or qualified interest group who claims to hold a demonstrable environmental interest and who alleges that the construction or operation of the proposed facility or activity would directly and adversely affect such interest.

If no written administrative hearing request is received by the Department by the end of twenty (20) days after the publication date of the notice, the final permit shall be issued.

2. If the Department's final decision is to deny the permit, it shall give notice to the applicant and issue a final denial in accordance with subsection F of this section.

D. When an administrative hearing is timely requested on a proposed permit in accordance with subsection C of this section, all timely requests shall be combined in a single hearing. The hearing shall be a quasi-judicial proceeding and shall be conducted by an Administrative Law Judge in accordance with Article 2 of the Administrative Procedures Act, the Code and rules promulgated by the Environmental Quality Board.

1. The applicant shall be a party to the hearing.

2. The Department shall schedule a prehearing conference within sixty (60) days after the end of the hearing request period.

3. The Department shall move expeditiously to an evidentiary proceeding in which parties shall have the right to present evidence before the Department on whether the proposed permit and the technical data, models and analyses, and information in the application upon which the proposed permit is based are in substantial compliance with applicable provisions of the Code and rules promulgated thereunder and whether the proposed permit should be issued as is, amended and issued, or denied.

4. Failure of any party to participate in the administrative proceeding with good faith and diligence may result in a default judgment with regard to that party; provided however, that no final permit shall be issued solely on the basis of any such judgment.

E. If the Department decides to reverse its initial draft decision, it shall withdraw the draft denial or draft permit and prepare a draft permit or draft denial, as appropriate. Notice of the withdrawal of the original draft and preparation of the revised draft shall be given as provided in Section 2-14-302 of this title. The Department shall then re-open the comment period and provide additional opportunity for a formal public meeting on the revised draft as described in Section 2-14-303 of this title.

F. Upon final issuance or denial of a permit for a Tier III application, the Department shall provide public notice of the final permit decision and the availability of the response to comments, if any.

G. Any appeal of a Tier III final permit decision or any final order connected therewith shall be made in accordance with the provisions of the Code and the Administrative Procedures Act.

H. Any applicant, within ten (10) days after final denial of the application for a new original permit on which no final order

was issued, may petition the Department for reconsideration on the grounds stated in subsection A of Section 317 of Title 75 of the Oklahoma Statutes as if the denial was an order. Disposition of the petition shall be by order of the Executive Director according to subsections B and D of Section 317 of Title 75 of the Oklahoma Statutes.

SECTION 4. REPEALER 27A O.S. 2001, Section 2-14-401, is hereby repealed.

SECTION 5. 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.

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