ENROLLED SENATE
BILL NO. 627

By: Price of the Senate

and

Leist of the House

An Act relating to environment and natural resources; creating the Oklahoma Credible Data Act; providing short title; defining terms; requiring certain data to be collected in accordance with certain plan; stating requirements for qualified sampling plan; requiring certain state agencies to review information obtained under qualified sampling plan for certain use; requiring certain rationale for disapproval; requiring certain state agencies to utilize certain protocols to develop uniform assessment methodologies; providing for data to be retained by state agencies for certain time period; stating tasks requiring use of credible data; stating exception; providing for agency decisions to be consistent with certain federal guidelines; prohibiting placement of certain water bodies on certain federal list under certain conditions; stating exception; stating provisions for placement on certain federal list; authorizing certain state agencies to determine placement of certain water bodies on federal list; providing for consideration of naturally occurring conditions; encouraging development of certain protocols; authorizing use of certain historical data; stating construction; providing for limited use of certain term; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-6-107.1 of Title 27A, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Credible Data Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-6-107.2 of Title 27A, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Credible Data Act:

1. “Credible data” means scientifically valid chemical, physical, or biological monitoring data collected under a scientifically accepted sampling and analysis plan, including but not limited to quality control and assurance procedures. The appropriate state agency shall develop a rationale supporting any decision to utilize or not utilize monitoring data dated more than five (5) years for streams and ten (10) years for lakes from the date of sampling. Data meeting criteria specified in Use Support Assessment Protocols shall be considered credible;

2. “Historical data” means data collected more than five (5) years for streams and ten (10) years for lakes before the date of sampling;

3. “Naturally occurring condition” means any condition affecting water quality which is not caused by human influence on the environment, including, but not limited to, soils, geology, hydrology, climate, wildlife influence on the environment, and water flow with specific consideration given to seasonal and other natural variations;

4. “Qualified sampling plan” means a plan used by a person that includes uniform data collection methods, and quality control and quality assurance for use in the water quality monitoring process consistent with guidelines developed by the appropriate state environmental agency as identified in the agency’s water quality standards implementation plan;

5. “Section 303(d) list” means any report or list required under 33 U.S.C., Section 1313(d);

6. “Section 305(b) report” means any report or list required under 33 U.S.C., Section 1315(b);

7. “Section 314 list” means any report or list required under 33 U.S.C., Section 1324;

8. “Section 319 assessment” means any report or list required under 33 U.S.C., Section 1329; and

9. “Total maximum daily load” shall have the same meaning as the term is defined in federal regulations promulgated pursuant to the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-6-107.3 of Title 27A, unless there is created a duplication in numbering, reads as follows:

For purposes of the Oklahoma Credible Data Act, all of the following shall apply:

1. Monitoring data is not credible data unless the data originates from studies and samples collected in accordance with a qualified sampling plan. The plan shall include:

a. uniform data collection methods, including but not limited to quality control and assurance procedures, which shall be consistent with guidelines that are included in each agency's water quality standards implementation plan, and

b. procedures for the utilization and verification of volunteer monitoring, provided all quality control guidelines are met;

2. All information obtained under a qualified sampling plan shall be reviewed by the appropriate state agency for use in water quality management decisions. The agency shall review all data collected, verify the accuracy of the data, and determine that all components of the qualified sampling plan were followed. Any credible data disapproved by the agency for the purpose of adding or deleting a water body to or from a list of impaired or threatened water bodies must be accompanied by a scientific rationale supporting that disapproval;

3. The state agencies with environmental responsibility for providing information used in the Sections 303(d) list, 305(b) report, 319 assessment, and 314 list, shall utilize Use Support Assessment Protocols, if available, to develop uniform assessment methodologies; and

4. The agency shall retain all information submitted under a qualified sampling plan for a period of not less than ten (10) years from the date of receipt by the state. All information submitted shall be a public record, except where such information may be kept confidential under state law.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-6-107.4 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The state agencies with the appropriate environmental responsibility shall use credible data if available when performing any of the following, if monitoring data is required for such task:

1. Developing and reviewing any water quality criterion;

2. Developing any statewide water quality inventory or other water assessment report or list, except as provided in Section 5 of this act;

3. Determining whether any water body is to be placed on or removed from any Section 303(d) list;

4. Determining whether any water body is supporting its designated use or other classification; and

5. Establishing a total maximum daily load for any water body.

B. The Oklahoma Credible Data Act shall not be construed to require credible data in order for a state agency to perform or review sampling in its areas of state environmental jurisdiction

related to regulatory permitting and monitoring or bring an enforcement action for any violation.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-6-107.5 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. All agency decisions regarding credible data shall be consistent with state and federal law and guidance as set forth in the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq., where applicable.

B. A water body shall not be placed on any Section 303(d) list if the data shows an impairment, but existing technology-based effluent limits or other required pollution control measures are adequate to achieve applicable water quality standards.

C. If a pollutant causing an impairment is unknown, the water body may be placed on a Section 303(d) list. However, the state agency with appropriate environmental responsibility shall continue to monitor the water body and attempt to identify the pollutant before a total maximum daily load is established for the water body.

D. When evaluating water bodies, the agency shall maintain a separate listing for which further investigative monitoring is necessary in addition to any lists and reports required by the Federal Clean Water Act. The Section 305(b) report shall be a summary of the water quality conditions of all water bodies in the state. Credible data is not required for a Section 305(b) report. In the absence of credible data, the identification of a water body as impaired on any section 305(b) report alone is not sufficient evidence for the water body's placement on any Section 303(d) list. When developing a Section 303(d) list, the agency is not required to use all data, but the agency shall assemble and evaluate all existing and readily available water quality related data and information. The agency may decide to rely or not rely on particular data or information in determining whether to list particular waters, consistent with the Clean Water Act and EPA's Section 303(d) regulations and guidelines. The agency may find it reasonable to exclude data and information. If so, the agency shall provide documentation of its rationale not to use such data to the regional administrator of the federal environmental protection agency to support the state's determination to list or not to list its waters.

E. The state agencies with appropriate responsibilities shall take into consideration any naturally occurring condition when placing or removing any water body on any Section 303(d) list, and establishing or allocating responsibility for a total maximum daily load.

F. Whenever possible, use support assessment protocols for narrative and numeric criteria and their associated designated uses shall be developed.

G. The state may also use historical data for a particular water body for the purpose of determining whether any trends exist for that water body.

H. This section shall not be construed to require or authorize the state to perform any act not otherwise required or authorized by applicable law.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-6-107.6 of Title 27A, unless there is created a duplication in numbering, reads as follows:

The requirements for "credible data", and the meaning of that term, as set forth in the Oklahoma Credible Data Act, are limited to the provisions of the Oklahoma Credible Data Act. Monitoring data dated five (5) years or less for streams and ten (10) years or less for lakes from the effective date of the Oklahoma Credible Data Act may be used for the tasks required in Section 4 of this act if the appropriate state agency develops a rationale supporting any decision to utilize the data.

SECTION 7. This act shall become effective July 1, 2001.

Passed the Senate the 22nd day of May, 2001.

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Presiding Officer of the Senate

Passed the House of Representatives the 24th day of May, 2001.

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Presiding Officer of the House
of Representatives