

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 627

By: Price

AS INTRODUCED

An Act relating to environment and natural resources; creating the Oklahoma Credible Data Act; providing short title; defining terms; stating purpose; requiring credible data; authorizing certain state agencies to develop criteria for use by qualified samplers; requiring state agencies to cooperate to determine qualifications for qualified samplers; requiring approval or disapproval by agency; stating requirements for certain sampling submissions; requiring certain scientific rationale for disapproval of data; requiring development of methodology for use in certain water quality assessments; requiring certain agencies to use credible data for certain purposes; stating exceptions; stating requirements for use or analysis of credible data; stating construction; stating applicability for certain use; providing for codification; providing an effective date; and declaring an emergency.

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 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 2-6-107.1 of Title 27A, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Credible data" shall mean scientifically valid chemical, physical, or biological monitoring data collected under a scientifically accepted sampling and analysis plan, including quality control and assurance procedures. Data dated more than five

(5) years for streams and ten (10) years for lakes before the state's date of listing shall be presumed not to be credible data unless the state identifies compelling reasons as to why the data is credible;

2. "Historical data" shall mean data collected more than five (5) years before the state's date of listing;

3. "Naturally occurring condition" shall mean 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 sampler" shall mean a person who received sufficient training from an accredited and scientifically recognized sampling program;

5. "Section 303(d) list" shall mean any report or list required under 33 U.S.C., Section 1313(d);

6. "Section 305(b) list" shall mean any report or list required under 33 U.S.C., Section 1315(b);

7. "Section 314 list" shall mean any report or list required under 33 U.S.C., Section 1324;

8. "Section 319 assessment" shall mean 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 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 2-6-107.2 of Title 27A, unless there is created a duplication in numbering, reads as follows:

For purposes of this section, all of the following shall apply:

1. Data is not credible data unless the data originates from studies and samples collected by a qualified sampler. Agencies with

environmental responsibilities shall develop a uniform data collection method, including quality control and assurance procedures, which shall be used by all qualified samplers;

2. Agencies with environmental responsibilities shall work cooperatively to determine what shall constitute adequate training or specifications to be a qualified sampler;

3. All information submitted by a qualified sampler shall be reviewed and approved or disapproved by the appropriate state agency. The qualified sampler shall submit a site specific plan with data which includes information used to obtain the data, the sampling and analysis plan, and the quality assurance and quality control procedures used in the monitoring process. The qualified sampler must provide proof to the agency that the water monitoring plan was followed. The agency shall review all data collected by a qualified sampler, verify the accuracy of the data collected by a qualified sampler, and determine that all components of the water monitoring method 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;

4. The state agency with the appropriate jurisdiction shall develop a methodology for water quality assessments as used in the Sections 303(d) list, 305(b) list, 319 assessment, and 314 list, and assess the validity of the data;

5. The agency shall retain all information submitted by a qualified sampler 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; and

6. Credible data determination procedures shall be included in the federal Continuing Planning Process (CPP).

SECTION 4. 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:

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

1. Developing and reviewing any water quality standard;
2. Developing any statewide water quality inventory or other water assessment report or list;
3. Determining whether any water body is to be placed on or removed from any Section 303(d) list, except other scientifically recognized methods may be used for removal of listed water bodies;
4. Determining whether any water body is supporting its designated use or other classification;
5. Determining any degradation of a water body under 40 C.F.R., section 131.12; and
6. Establishing a total maximum daily load for any water body.

B. The state agency shall distinguish between credible and historical data within the 305(b) Assessment Database.

C. This section shall not be construed to require credible data in order for a state agency to bring an enforcement action for a discharge violation.

SECTION 5. 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. All 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 impairment is caused solely by violations of the national pollutant discharge elimination system program permits or stormwater

permits and the enforcement of the pollution control measures is required.

C. 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.

D. 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 to identify the pollutant before a total maximum daily load is established for the water body.

E. When evaluating water bodies, the agency shall maintain 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) list shall be a summary of the water quality conditions of all monitored waters for which credible data is not required. If credible data is not required for a Section 305(b) list, the placement of a water body on any section 305(b) list 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 on the basis of quality control purposes, trend information, and age of data. The agency shall provide documentation to the regional administrator of the federal environmental protection agency to support the state's determination to list or not to list its waters.

F. 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.

G. Whenever possible, the agencies shall develop use support assessment protocols for narrative and numeric criteria and their associated designated uses.

H. If the state has obtained credible data for a water body, the state may also use historical data for that particular water body for the purpose of determining whether any trends exist for that water body.

I. 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. This act shall become effective July 1, 2001.

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.

48-1-488

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