

ENGROSSED SENATE AMENDMENTS
TO
ENGROSSED HOUSE
BILL NO. 2198

By: Leist of the House

and

Shurden of the Senate

An Act relating to environment and natural resources; amending 51 O.S. 2001, Section 155, as amended by Section 3, Chapter 304, O.S.L. 2003 (51 Supp. 2003, Section 155), which relates to The Governmental Tort Claims Act; adding liability exemption for authorized environmental cleanup; amending 27A O.S. 2001, Section 1-2-101, as amended by Section 1, Chapter 381, O.S.L. 2003 (27A O.S. Supp. 2003, Section 1-2-101), which relates to duties of Secretary of the Environment; expanding distribution of certain reports; and providing an effective date.

AMENDMENT NO. 1. Page 5, line 9, after the word "effects" and before the word "with" delete the word "associated" and insert the words "in compliance"

AMENDMENT NO. 2. Page 5, line 12 1/2, insert a new Section 2 to read

"SECTION 2. AMENDATORY 27A O.S. 2001, Section 2-15-108, is amended to read as follows:

Section 2-15-108. A. 1. The Department of Environmental Quality shall not assess against an applicant administrative penalties or pursue civil actions associated with the contamination which is the subject of the consent order or no action necessary determination if:

- a. the applicant is in compliance with the consent order during remediation or with the Certificate of No Action Necessary, and
- b. the applicant is in compliance with any post-certification conditions or requirements specified in the consent order.

2. After issuance of the Certificate of Completion or Certificate of No Action Necessary, the Department shall not assess administrative penalties or pursue civil actions associated with the contamination which is the subject of the consent order or no action necessary determination against any lender, lessee, or successor or assign if the lender, lessee, or successor or assign is in compliance with any post-certification conditions or requirements as specified in the consent order or Certificate of No Action Necessary.

B. 1. Failure of the applicant and any lenders, lessees, or successors or assigns to materially comply with the consent order entered into pursuant to the Oklahoma Brownfields Voluntary Redevelopment Act shall render the consent order or the Certificate of Completion or the Certificate of No Action Necessary voidable.

2. Submission of any false or materially misleading information by the applicant knowing such information to be false or misleading shall render the consent order, Certificate of Completion, or Certificate of No Action Necessary voidable.

C. 1. An applicant to whom a Certificate of Completion or a Certificate of No Action Necessary has been issued pursuant to the Oklahoma Brownfields Voluntary Redevelopment Act and such applicant's lenders, lessees, or successors or assigns shall not be subject to civil liability with regard to the remedial actions taken by the applicant for environmental contamination caused by regulated substances as required by the consent order if the remedial action is not performed in a reckless or negligent manner.

2. Except as otherwise provided in this subsection, nothing in the Oklahoma Brownfields Voluntary Redevelopment Act shall be construed to limit or negate any other rights of any person from pursuing or receiving legal or equitable relief from the applicant or any other person or legal entity causing or contributing to the environmental contamination, provided any person, state or local

political subdivision thereon or other legal entity purchasing, in good faith, any property which has been subject to the Brownfields Voluntary Redevelopment Act shall not be subject to civil liability or other equitable relief for any remedial action taken by the applicant or for any environmental contamination caused by the regulated substances or the applicant.

3. In those cases where an applicant conducts a voluntary remediation in conjunction with a party responsible for the contamination, the responsible party shall also be released from liability to the same extent as the applicant.

D. The release of liability from administrative penalties and any civil actions authorized by the Oklahoma Brownfields Voluntary Redevelopment Act shall not apply to:

1. Any environmental contamination and consequences thereof that the applicant causes or has caused outside the scope of the consent order or the certificate issued by the Department;

2. Any contamination caused or resulting from any subsequent redevelopment of the property;

3. Existing contamination caused by regulated substances not addressed prior to issuance of the Certificate of Completion or the Certificate of No Action Necessary; or

4. Any person responsible for contamination who has not participated in the voluntary remediation."

and renumber subsequent sections

AMENDMENT NO. 3. Page 1, strike the title to read

[environment and natural resources - The Government
Tort Claims Act - Secretary of the Environment -
duties - reports -

effective date]

Passed the Senate the 19th day of April, 2004.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2004.

Presiding Officer of the House
of Representatives