

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1874

By: Langmacher of the House

and

Price of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to asbestos; amending 27A O.S. 2001, Section 1-3-101, as last amended by Section 2 of Enrolled Senate Bill No. 1204 of the 2nd Session of the 49th Legislature, which relates to state environmental agencies; adding certain asbestos programs to jurisdiction of Department of Environmental Quality; deleting certain asbestos programs from Department of Labor; amending 27A O.S. 2001, Section 2-2-201, which relates to Advisory Councils of the Environmental Quality Board; creating Asbestos Advisory Council; providing for membership of Asbestos Advisory Council; stating jurisdiction of Council; amending 27A O.S. 2001, Section 2-3-401, which relates to the Department of Environmental Quality Revolving Fund; providing for transfer of certain revolving funds; amending 40 O.S. 2001, Sections 450, 451, 452, 453, 455 and 456, which relate to the Oklahoma Asbestos Control Act; modifying citations; modifying definitions; granting authority for licensing to Department of Environmental Quality; directing Department to issue certain permits; providing for collection of fees by Department; authorizing Environmental Quality Board to promulgate rules; restricting promulgation of rules to federal standard; deleting obsolete language; authorizing Executive Director of Department of Environmental Quality to enter certain properties; transferring programs and functions of the Oklahoma Asbestos Control Act from the Department of Labor to the Department of Environmental Quality; transferring rules and fee schedules for certain time period; requiring Environmental Quality Board to adopt new rules by certain date; providing for certain licenses, permits, certifications and registrations to remain valid; transferring rights, obligations, remedies and pending applications to Department; stating transfer of programs and functions shall not negate certain actions; providing for transfer of certain employees; authorizing reduction-in-force plans; authorizing Executive Director to submit proposed statutory changes by certain date; amending 74 O.S. 2001, Section 61.6, as amended by Section 1, Chapter 37, O.S.L. 2002 (74 O.S. Supp. 2003, Section 61.6), which relates to

asbestos services of Department of Central Services; clarifying language; repealing 40 O.S. 2001, Sections 454 and 457, which relate to the Oklahoma Asbestos Control Act; providing for codification; providing for recodification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 27A O.S. 2001, Section 1-3-101, as last amended by Section 2 of Enrolled Senate Bill No. 1204 of the 2nd Session of the 49th Legislature, is amended to read as follows:

Section 1-3-101. A. The provisions of this section specify the jurisdictional areas of responsibility for each state environmental agency and state agencies with limited environmental responsibility. The jurisdictional areas of environmental responsibility specified in this section shall be in addition to those otherwise provided by law and assigned to the specific state environmental agency; provided that any rule, interagency agreement or executive order enacted or entered into prior to the effective date of this section which conflicts with the assignment of jurisdictional environmental responsibilities specified by this section is hereby superseded. The provisions of this subsection shall not nullify any financial obligation arising from services rendered pursuant to any interagency agreement or executive order entered into prior to July 1, 1993, nor nullify any obligations or agreements with private persons or parties entered into with any state environmental agency before July 1, 1993.

B. Department of Environmental Quality. The Department of Environmental Quality shall have the following jurisdictional areas of environmental responsibility:

1. All point source discharges of pollutants and storm water to waters of the state which originate from municipal, industrial,

commercial, mining, transportation and utilities, construction, trade, real estate and finance, services, public administration, manufacturing and other sources, facilities and activities, except as provided in subsections D and E of this section;

2. All nonpoint source discharges and pollution except as provided in subsections D, E and F of this section;

3. Technical lead agency for point source, nonpoint source and storm water pollution control programs funded under Section 106 of the federal Clean Water Act, for areas within the Department's jurisdiction as provided in this subsection;

4. Surface water and groundwater quality and protection and water quality certifications;

5. Waterworks and wastewater works operator certification;

6. Public and private water supplies;

7. Underground injection control pursuant to the federal Safe Drinking Water Act and 40 CFR Parts 144 through 148, except for Class II injection wells, Class V injection wells utilized in the remediation of groundwater associated with underground or aboveground storage tanks regulated by the Corporation Commission, and those wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act regulated by the Corporation Commission;

8. Air quality under the federal Clean Air Act and applicable state law, except for indoor air quality ~~and asbestos~~ as regulated for worker safety by the federal Occupational Safety and Health Act ~~and by Chapter 11 of Title 40 of the Oklahoma Statutes;~~

9. Hazardous waste and solid waste, including industrial, commercial and municipal waste;

10. Superfund responsibilities of the state under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and amendments thereto, except the planning requirements of

Title III of the Superfund Amendment and Reauthorization Act of 1986;

11. Radioactive waste and all regulatory activities for the use of atomic energy and sources of radiation except for the use of sources of radiation by diagnostic x-ray facilities;

12. Water, waste, and wastewater treatment systems including, but not limited to, septic tanks or other public or private waste disposal systems;

13. Emergency response as specified by law;

14. Environmental laboratory services and laboratory certification;

15. Hazardous substances other than branding, package and labeling requirements;

16. Freshwater wellhead protection;

17. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Department;

18. Utilization and enforcement of Oklahoma Water Quality Standards and implementation documents;

19. Environmental regulation of any entity or activity, and the prevention, control and abatement of any pollution, not subject to the specific statutory authority of another state environmental agency;

20. Development and maintenance of a computerized information system relating to water quality pursuant to Section 1-4-107 of this title; ~~and~~

21. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional area of environmental responsibility;

22. Regulation of asbestos in the workplace pursuant to Article XVI of Chapter 2 of this title; and

23. Asbestos monitoring in public and private buildings.

C. Oklahoma Water Resources Board. The Oklahoma Water Resources Board shall have the following jurisdictional areas of environmental responsibility:

1. Water quantity including, but not limited to, water rights, surface water and underground water, planning, and interstate stream compacts;

2. Weather modification;

3. Dam safety;

4. Flood plain management;

5. State water/wastewater loans and grants revolving fund and other related financial aid programs;

6. Administration of the federal State Revolving Fund Program including, but not limited to, making application for and receiving capitalization grant awards, wastewater prioritization for funding, technical project reviews, environmental review process, and financial review and administration;

7. Water well drillers/pump installers licensing;

8. Technical lead agency for clean lakes eligible for funding under Section 314 of the federal Clean Water Act or other applicable sections of the federal Clean Water Act or other subsequent state and federal clean lakes programs; administration of a state program for assessing, monitoring, studying and restoring Oklahoma lakes with administration to include, but not be limited to, receipt and expenditure of funds from federal, state and private sources for clean lakes and implementation of a volunteer monitoring program to assess and monitor state water resources, provided such funds from federal Clean Water Act sources are administered and disbursed by the Office of the Secretary of Environment;

9. Statewide water quality standards and their accompanying use support assessment protocols, anti-degradation policy and implementation, and policies generally affecting Oklahoma Water Quality Standards application and implementation including but not

limited to mixing zones, low flows and variances or any modification or change thereof pursuant to Section 1085.30 of Title 82 of the Oklahoma Statutes;

10. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Board;

11. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional area of environmental responsibility;

12. Development of classifications and identification of permitted uses of groundwater, in recognized water rights, and associated groundwater recharge areas;

13. Establishment and implementation of a statewide beneficial use monitoring program for waters of the state in coordination with the other state environmental agencies;

14. Coordination with other state environmental agencies and other public entities of water resource investigations conducted by the federal United States Geological Survey for water quality and quantity monitoring in the state; and

15. Development and submission of a report concerning the status of water quality monitoring in this state pursuant to Section 1-1-202 of this title.

D. Oklahoma Department of Agriculture, Food, and Forestry. 1. The Oklahoma Department of Agriculture, Food, and Forestry shall have the following jurisdictional areas of environmental responsibility except as provided in paragraph 2 of this subsection:

- a. point source discharges and nonpoint source runoff from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste,
- b. pesticide control,
- c. forestry and nurseries,
- d. fertilizer,

- e. facilities which store grain, feed, seed, fertilizer and agricultural chemicals,
- f. dairy waste and wastewater associated with milk production facilities,
- g. groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Department,
- h. utilization and enforcement of Oklahoma Water Quality Standards and implementation documents,
- i. development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility, and
- j. storm water discharges for activities subject to the jurisdictional areas of environmental responsibility of the Department.

2. In addition to the jurisdictional areas of environmental responsibility specified in subsection B of this section, the Department of Environmental Quality shall have environmental jurisdiction over:

- a. (1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,
- (2) slaughterhouses, but not including feedlots at these facilities, and
- (3) aquaculture and fish hatcheries,

including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at these facilities, and

- b. facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

E. Corporation Commission. 1. The Corporation Commission is hereby vested with exclusive jurisdiction, power and authority, and it shall be its duty to promulgate and enforce rules, and issue and enforce orders governing and regulating:

- a. the conservation of oil and gas,
- b. field operations for geologic and geophysical exploration for oil, gas and brine, including seismic survey wells, stratigraphic test wells and core test wells,
- c. the exploration, drilling, development, producing or processing for oil and gas on the lease site,
- d. the exploration, drilling, development, production and operation of wells used in connection with the recovery, injection or disposal of mineral brines,
- e. reclaiming facilities only for the processing of salt water, crude oil, natural gas condensate and tank bottoms or basic sediment from crude oil tanks, pipelines, pits and equipment associated with the exploration, drilling, development, producing or transportation of oil or gas,
- f. underground injection control pursuant to the federal Safe Drinking Water Act and 40 CFR Parts 144 through 148, of Class II injection wells, Class V injection wells utilized in the remediation of groundwater associated with underground or aboveground storage tanks regulated by the Corporation Commission, and

those wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act. Any substance that the United States Environmental Protection Agency allows to be injected into a Class II well may continue to be so injected,

- g. tank farms for storage of crude oil and petroleum products which are located outside the boundaries of refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, or other facilities which are subject to the jurisdiction of the Department of Environmental Quality with regard to point source discharges,
- h. the construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum products, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or mineral brine during the course of transportation but not including line pipes in any:
 - (1) natural gas liquids extraction plant,
 - (2) refinery,
 - (3) reclaiming facility other than for those specified within subparagraph e of this subsection,
 - (4) mineral brine processing plant, and
 - (5) petrochemical manufacturing plant,
- i. the handling, transportation, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and operating of oil and gas wells, at:

- (1) any facility or activity specifically listed in paragraphs 1 and 2 of this subsection as being subject to the jurisdiction of the Commission, and
 - (2) other oil and gas extraction facilities and activities,
- j. spills of deleterious substances associated with facilities and activities specified in paragraph 1 of this subsection or associated with other oil and gas extraction facilities and activities,
 - k. subsurface storage of oil, natural gas and liquefied petroleum gas in geologic strata,
 - l. groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission,
 - m. utilization and enforcement of Oklahoma Water Quality Standards and implementation documents, and
 - n. development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility.

2. The exclusive jurisdiction, power and authority of the Corporation Commission shall also extend to the construction, operation, maintenance, site remediation, closure and abandonment of the facilities and activities described in paragraph 1 of this subsection.

3. When a deleterious substance from a Commission regulated facility or activity enters a point source discharge of pollutants or storm water from a facility or activity regulated by the Department of Environmental Quality, the Department shall have sole jurisdiction over the point source discharge of the commingled pollutants and storm water from the two facilities or activities

insofar as Department-regulated facilities and activities are concerned.

4. For purposes of the federal Clean Water Act, any facility or activity which is subject to the jurisdiction of the Corporation Commission pursuant to paragraph 1 of this subsection and any other oil and gas extraction facility or activity which requires a permit for the discharge of a pollutant or storm water to waters of the United States shall be subject to the direct jurisdiction of the federal Environmental Protection Agency and shall not be required to be permitted by the Department of Environmental Quality or the Corporation Commission for such discharge.

5. The Corporation Commission shall have jurisdiction over:

- a. underground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at the upstream or intermediate shipment points of pipeline operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below; provided, that any point source discharge of a pollutant to waters of the United States during site remediation or the off-site disposal of contaminated soil, media, or debris shall be regulated by the Department of Environmental Quality,
- b. aboveground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at the upstream or intermediate shipment points of pipeline operations, including, but not limited to,

tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below; provided, that any point source discharge of a pollutant to waters of the United States during site remediation or the off-site disposal of contaminated soil, media, or debris shall be regulated by the Department of Environmental Quality, and

- c. the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund, the Oklahoma Petroleum Storage Tank Release Indemnity Program and the Oklahoma Leaking Underground Storage Tank Trust Fund.

6. The Department of Environmental Quality shall have sole jurisdiction to regulate the transportation, discharge or release of deleterious substances or solid or hazardous waste or other pollutants from rolling stock and rail facilities.

7. The Department of Environmental Quality shall have sole environmental jurisdiction for point and nonpoint source discharges of pollutants and storm water to waters of the state from:

- a. refineries, petrochemical manufacturing plants and natural gas liquid extraction plants,
- b. manufacturing of equipment and products related to oil and gas,
- c. bulk terminals, aboveground and underground storage tanks not subject to the jurisdiction of the Commission pursuant to this subsection, and
- d. other facilities, activities and sources not subject to the jurisdiction of the Corporation Commission or the Oklahoma Department of Agriculture, Food, and Forestry as specified by this section.

8. The Department of Environmental Quality shall have sole environmental jurisdiction to regulate air emissions from all facilities and sources subject to operating permit requirements under Title V of the federal Clean Air Act as amended.

F. Oklahoma Conservation Commission. The Oklahoma Conservation Commission shall have the following jurisdictional areas of environmental responsibility:

1. Soil conservation, erosion control and nonpoint source management except as otherwise provided by law;

2. Monitoring, evaluation and assessment of waters to determine the condition of streams and rivers being impacted by nonpoint source pollution. In carrying out this area of responsibility, the Conservation Commission shall serve as the technical lead agency for nonpoint source categories as defined in Section 319 of the federal Clean Water Act or other subsequent federal or state nonpoint source programs, except for activities related to industrial and municipal storm water or as otherwise provided by state law;

3. Wetlands strategy;

4. Abandoned mine reclamation;

5. Cost-share program for land use activities;

6. Assessment and conservation plan development and implementation in watersheds of clean lakes, as specified by law;

7. Complaint data management;

8. Coordination of environmental and natural resources education;

9. Federal upstream flood control program;

10. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission;

11. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility; and

12. Utilization of Oklahoma Water Quality Standards and Implementation documents.

G. Department of Mines. The Department of Mines shall have the following jurisdictional areas of environmental responsibility:

1. Mining regulation;
2. Mining reclamation of active mines;
3. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission; and

4. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of responsibility.

H. Department of Wildlife Conservation. The Department of Wildlife Conservation shall have the following jurisdictional areas of environmental responsibilities:

1. Investigating wildlife kills;
2. Wildlife protection and seeking wildlife damage claims; and
3. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility.

I. Department of Public Safety. The Department of Public Safety shall have the following jurisdictional areas of environmental responsibilities:

1. Hazardous waste, substances and material transportation inspections as authorized by the Hazardous Materials Transportation Act; and

2. Inspection and audit activities of hazardous waste and materials carriers and handlers as authorized by the Hazardous Materials Transportation Act.

J. Department of Labor. The Department of Labor shall have the following jurisdictional ~~areas~~ area of environmental responsibility:

~~1. Regulation of asbestos in the workplace pursuant to Chapter 11 of Title 40 of the Oklahoma Statutes;~~

~~2. Asbestos monitoring in public and private buildings; and~~

3. ~~Indoor~~ for indoor air quality as regulated under the authority of the Oklahoma Occupational Health and Safety Standards Act, except for those indoor air quality issues specifically authorized to be regulated by another agency.

~~Such programs shall be a function of the Department's occupational safety and health jurisdiction.~~

K. Oklahoma Department of ~~Civil~~ Emergency Management. The Oklahoma Department of ~~Civil~~ Emergency Management shall have the following jurisdictional areas of environmental responsibilities:

1. Coordination of all emergency resources and activities relating to threats to citizens' lives and property pursuant to the Oklahoma ~~Civil Defense and Emergency Resources~~ Management Act of ~~1967~~ 2003;

2. Administer and enforce the planning requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986 and develop such other emergency operations plans that will enable the state to prepare for, respond to, recover from and mitigate potential environmental emergencies and disasters pursuant to the Oklahoma Hazardous Materials Planning and Notification Act;

3. Administer and conduct periodic exercises of emergency operations plans provided for in this subsection pursuant to the Oklahoma ~~Civil Defense and Emergency Resources~~ Management Act of ~~1967~~ 2003;

4. Administer and facilitate hazardous materials training for state and local emergency planners and first responders pursuant to the Oklahoma ~~Civil Defense and Emergency Resources~~ Management Act of ~~1967~~ 2003; and

5. Maintain a computerized emergency information system allowing state and local access to information regarding hazardous materials' location, quantity and potential threat.

SECTION 2. AMENDATORY 27A O.S. 2001, Section 2-2-201, is amended to read as follows:

Section 2-2-201. A. There are hereby created:

1. The Water Quality Management Advisory Council;
2. The Hazardous Waste Management Advisory Council;
3. The Solid Waste Management Advisory Council;
4. The Radiation Management Advisory Council; ~~and~~
5. The Laboratory Services Advisory Council; and
6. The Asbestos Advisory Council.

B. 1. Each Advisory Council created pursuant to subsection A of this section shall consist of nine (9) members. Three members shall be appointed by the Governor, three members shall be appointed by the Speaker of the House of Representatives and three members shall be appointed by the President Pro Tempore of the Senate. The initial appointments for each gubernatorial and legislative member shall be for progressive terms of one (1) through three (3) years so that only one term expires each calendar year; subsequent appointments shall be for three-year terms. Members of the Advisory Councils shall serve at the pleasure of and may be removed from office by the appointing authority. Members shall continue to serve until their successors are appointed. Any vacancy shall be filled in the same manner as the original appointments. Five members shall constitute a quorum.

2. Each Advisory Council shall elect a chair and a vice-chair from among its members. Each Council shall meet as required for rule development, review and recommendation and for such other purposes specified by law. Special meetings may be called by the chair or by the concurrence of any three (3) members.

C. 1. All members of the Water Quality Management Advisory Council shall be knowledgeable of water quality and of the environment. The Council shall be composed as follows:

a. the Governor shall appoint three members as follows:

- (1) one member representing the field of engineering,
- (2) one member representing a statewide nonprofit environmental organization, and
- (3) one member representing the general public,

b. the President Pro Tempore of the Senate shall appoint three members as follows:

- (1) one member representing an industry located in this state,
- (2) one member representing an oil field-related industry, and
- (3) one member representing the field of geology, and

c. the Speaker of the House of Representatives shall appoint three members as follows:

- (1) one member representing a political subdivision of the state who shall be a member of the local governmental body of a city or town,
- (2) one member representing a rural water district organized pursuant to the laws of this state, and
- (3) one member representing the field of agriculture.

2. The jurisdictional areas of the Water Quality Management Advisory Council shall include Article VI of this chapter, water quality and protection and related activities and such other areas as designated by the Environmental Quality Board.

D. 1. All members of the Hazardous Waste Management Advisory Council shall be knowledgeable of hazardous waste and of the environment. The Council shall be composed as follows:

a. the Governor shall appoint three members as follows:

- (1) one member representing an industry located in this state,
 - (2) one member representing a statewide nonprofit environmental organization, and
 - (3) one member representing a political subdivision of the state who shall be a member of the local governing body of a city or town,
- b. the President Pro Tempore of the Senate shall appoint three members as follows:
- (1) one member representing a political subdivision of the state who shall be a member of the local governmental body of a city or town,
 - (2) one member representing the general public, and
 - (3) one member representing industry generating hazardous waste, and
- c. the Speaker of the House of Representatives shall appoint three members as follows:
- (1) one member representing the field of engineering,
 - (2) one member representing the hazardous waste industry, and
 - (3) one member representing the field of geology.

2. The jurisdictional areas of the Hazardous Waste Management Advisory Council shall include Article VII of this chapter, the Oklahoma Hazardous Waste Reduction Program, and such other areas as designated by the Board.

E. 1. All members of the Solid Waste Management Advisory Council shall be knowledgeable of solid waste and of the environment. The Council shall be composed as follows:

- a. the Governor shall appoint three members as follows:
- (1) one member representing a statewide nonprofit environmental organization,
 - (2) one member shall be a county commissioner, and

- (3) one member representing the general public,
- b. the President Pro Tempore of the Senate shall appoint three members as follows:
 - (1) one member representing an industry located in this state generating solid waste,
 - (2) one member representing a political subdivision of this state who shall be a member of the local governmental body of a city or town, and
 - (3) one member representing the field of geology, and
- c. the Speaker of the House of Representatives shall appoint three members as follows:
 - (1) one member representing the solid waste disposal industry in this state,
 - (2) one member representing the field of engineering, and
 - (3) one member representing the transportation industry.

2. The jurisdictional areas of the Solid Waste Management Advisory Council shall include Article X of this chapter, the Oklahoma Waste Tire Recycling Act and such other areas as designated by the Board.

F. 1. All members of the Radiation Management Advisory Council shall be knowledgeable of radiation hazards and radiation protection. The Council shall be composed as follows:

- a. the Governor shall appoint three members as follows:
 - (1) one member representing an industry located in this state which uses sources of radiation in its manufacturing or processing business,
 - (2) one member representing a statewide nonprofit environmental organization, and
 - (3) one member representing the engineering profession who shall be a professional engineer

employed and experienced in matters of radiation management and protection,

b. the President Pro Tempore of the Senate shall appoint three members as follows:

- (1) one member representing the faculty of an institution of higher learning of university status and shall be experienced in matters of scientific knowledge and competent in matters of radiation management and protection,
- (2) one member representing the general public, and
- (3) one member representing the field of industrial radiography, and

c. the Speaker of the House of Representatives shall appoint three members as follows:

- (1) one member representing the transportation industry,
- (2) one member representing the petroleum industry who is trained and experienced in radiation management and protection, and
- (3) one member representing a medical institution within this state who shall be experienced in matters of radiation management and protection.

2. The jurisdictional areas of the Radiation Management Advisory Council shall include Article IX of this chapter and such other areas as designated by the Board.

G. 1. All members of the Laboratory Services Advisory Council shall be knowledgeable of laboratory services and certification standards. The Council shall be composed as follows:

- a. the Governor shall appoint three members as follows:
- (1) one member representing a private laboratory within the state certified by the Department,

- (2) one member representing the field of hydro-geology, and
 - (3) one member representing permit holders required to routinely submit laboratory analyses results to the Department of Environmental Quality,
- b. the President Pro Tempore of the Senate shall appoint three members as follows:
- (1) one member representing a private laboratory within the state certified by the Department,
 - (2) one member representing a public laboratory within the state certified by the Department, and
 - (3) one member representing the field of microbiology, and
- c. the Speaker of the House of Representatives shall appoint three members as follows:
- (1) one member representing a private laboratory within the state certified by the Department,
 - (2) one member representing permit holders required to routinely submit laboratory analyses results to the Department, and
 - (3) one member representing the field of environmental chemistry.

2. The jurisdictional areas of the Laboratory Services Advisory Council shall include Article IV of this chapter and such other areas designated by the Board.

H. 1. The Air Quality Council created pursuant to Section 6, Chapter 215, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-1807.1) shall remain in effect as the Air Quality Advisory Council and carry on the powers and duties assigned to it by law. The current members of the Air Quality Council shall remain on the Council until the expiration of their individual terms of office or until such offices

are vacated. Future appointments to the Council shall be made according to the provisions of this section.

2. The Council shall consist of nine (9) members who shall be residents of this state and appointed by the Governor with the advice and consent of the Senate.

3. Members of the Council shall have the qualifications as follows:

- a. one member shall be selected from the engineering profession, and, as such, shall be a professional engineer and experienced in matters of air pollution equipment and control, who shall not be an employee of any unit of government,
- b. one member shall be selected from industry in general, and, as such, shall be employed as a manufacturing executive carrying on a manufacturing business within this state,
- c. one member shall be selected from a faculty of an institution of higher learning of university status and shall be experienced in matters of scientific knowledge and competent in matters of air pollution control and evaluation,
- d. one member shall be selected from the transportation industry,
- e. one member shall be selected from the petroleum industry, and, as such, shall be employed by a petroleum company carrying on a petroleum refining business within the state, and, as such, shall be trained and experienced in matters of scientific knowledge of causes as well as effects of air pollution,
- f. one member shall be selected from agriculture, and, as such, shall be engaged in or employed by a basic

agricultural business or the processing of
agricultural products,

- g. one member shall be selected from the political subdivisions of the state, and, as such, shall be a member of the local government body of a city or town,
- h. one member, whose first term shall expire on June 15, 1998, shall be selected from the general public, and
- i. one member, whose first term shall expire on June 15, 1999, shall be selected from the electric utilities industry, and as such, shall be knowledgeable in matters of air pollution and control.

4. Each member shall be appointed to serve a term of office of seven (7) years, except that the term of those first appointed shall expire as follows:

One at the end of one (1) year after date of appointment;

One at the end of two (2) years after date of appointment;

One at the end of three (3) years after date of
appointment;

One at the end of four (4) years after date of appointment;

One at the end of five (5) years after date of appointment;

One at the end of six (6) years after date of appointment;

and

One at the end of seven (7) years after date of
appointment;

The terms of all members shall be deemed to have expired on June 15th of the year of expiration, and shall continue until successors have been duly appointed and qualified. If a vacancy occurs, the Governor shall appoint a person for the remaining portion of the unexpired term created by the vacancy. Five members of the Council shall constitute a quorum.

5. The Council shall hold at least two regular meetings each calendar year at a place and time to be fixed by the Council. The

Council shall select one of its members to serve as chair and another of its members to serve as vice-chair at the first regular meeting in each calendar year to serve as the chair and vice-chair for the ensuing year. Special meetings may be called, and any meeting may be canceled, by the chair, or by three members of the Council by delivery of written notice to each member of the Council.

6. The jurisdictional areas of the Air Quality Council shall include Article V of this chapter and such other areas as designated by the Board.

I. 1. All members of the Asbestos Advisory Council shall be knowledgeable of asbestos and of the environment. The Council shall be composed as follows:

a. the Governor shall appoint three members as follows:

(1) one member who is a Certified Industrial Hygienist with experience in asbestos removal,

(2) one member representing a statewide nonprofit environmental organization who has a specialty in air quality, and

(3) one member representing the general public,

b. the President Pro Tempore of the Senate shall appoint three members as follows:

(1) one member who is a licensed asbestos abatement contractor, management planner, or project designer,

(2) one member representing an asbestos remediation related industry, including, but not limited to, equipment retailers and manufacturers, and

(3) one member who is a contractor, consultant or other person who has a specialty of safety in the workplace, and

c. the Speaker of the House of Representatives shall appoint three members as follows:

- (1) one member who represents a municipality or school,
- (2) one member who shall be a physician who specializes in pulmonary disease, and
- (3) one member who is a licensed asbestos abatement worker or supervisor and is employed to remove asbestos.

2. The jurisdictional areas of the Asbestos Advisory Council shall include Article XVI of this chapter, asbestos remediation and protection and related activities and such other areas as designated by the Board.

J. In addition to other powers and duties assigned to each Council pursuant to this Code, each Council shall, within its jurisdictional area:

1. Have authority to recommend to the Board rules on behalf of the Department. The Department shall not have standing to recommend to the Board permanent rules or changes to such rules within the jurisdiction of a Council which have not previously been submitted to the appropriate Council for action;

2. Before recommending any permanent rules to the Board, give public notice, offer opportunity for public comment and conduct a public rulemaking hearing when required by the Administrative Procedures Act;

3. Have the authority to make written recommendations to the Board which have been concurred upon by at least a majority of the membership of the Council;

4. Have the authority to provide a public forum for the discussion of issues it considers relevant to its area of jurisdiction, and to:

- a. pass nonbinding resolutions expressing the sense of the Council, and

- b. make recommendations to the Board or Department concerning the need and the desirability of conducting meetings, workshops and seminars; and

5. Cooperate with each other Council, the public, the Board and the Executive Director in order to coordinate the rules within their respective jurisdictional areas and to achieve maximum efficiency and effectiveness in furthering the objectives of the Department.

~~J.~~ K. The Councils shall not recommend rules for promulgation by the Environmental Quality Board unless all applicable requirements of the Administrative Procedures Act have been followed, including but not limited to notice, rule impact statement and rule-making hearings.

~~K.~~ L. Members of the Councils shall serve without compensation but may be reimbursed expenses incurred in the performance of their duties, as provided in the State Travel Reimbursement Act. The Councils are authorized to utilize the conference rooms of the Department of Environmental Quality and obtain administrative assistance from the Department, as required.

SECTION 3. AMENDATORY 27A O.S. 2001, Section 2-3-401, is amended to read as follows:

Section 2-3-401. A. 1. There is hereby created in the State Treasury a revolving fund for the Department of Environmental Quality to be designated the "Department of Environmental Quality Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Department from appropriations, administrative penalties, fees, charges, gifts and monies from any other source that are not designated for deposit to any other fund authorized by this Code.

2. All monies accruing to the credit of ~~said~~ the fund are hereby appropriated and may be budgeted and expended by the Department for the purpose of implementing and enforcing this Code.

3. Expenditures from ~~said~~ the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

B. 1. Individual subaccounts shall be established in the Department of Environmental Quality Revolving Fund as necessary to maintain the tracking of monies collected and to support the programs and functions within the jurisdiction of the Department.

2. Each subaccount shall consist of all monies collected pursuant to the program or function for which such subaccount has been established and all monies collected for such programs and functions shall be expended only and solely in furtherance of the statutory objectives of such programs and functions. Provided, as otherwise authorized by law, the Department may transfer monies between subaccounts to meet cash flow needs of the Department so long as the monies are transferred back to the appropriate subaccount to be expended on the appropriate programs and functions.

C. All revolving fund monies belonging to, deposited in or payable to the ~~State Department of Health or the Oklahoma Water Resources Board for the purpose of administering a program or function over which the Department of Environmental Quality has jurisdiction, are hereby transferred to the appropriate funds of the Department of Environmental Quality. All other monies belonging to, deposited in or payable to any other revolving fund under the jurisdiction of the Department~~ of Labor for the Asbestos Abatement Division pursuant to the Oklahoma Asbestos Control Act are hereby transferred to an appropriate subaccount of the Department.

SECTION 4. AMENDATORY 40 O.S. 2001, Section 450, is amended to read as follows:

Section 450. ~~Sections 265 through 270 of this act~~ This article shall be known and may be cited as the "Oklahoma Asbestos Control Act".

SECTION 5. AMENDATORY 40 O.S. 2001, Section 451, is amended to read as follows:

Section 451. As used in the Oklahoma Asbestos Control Act:

1. "Friable-asbestos-containing material" means any material that contains asbestos of more than one percent (1%) ~~or more~~ that can be crumbled, pulverized or reduced to powder by hand pressure;

2. "Friable asbestos material abatement" means the removal, encapsulation or enclosure of friable-asbestos-containing material;

3. "Friable asbestos material encapsulation" means the application of a bonding agent called a sealant, which penetrates and hardens the asbestos material or covers the surface of the material with a protective coating, thus preventing fiber release from the asbestos material;

4. "Friable asbestos material removal" means the actual physical removal of any friable-asbestos-containing material from a facility, when the asbestos is either attached to or detached from any device or structure; and

5. "Contractor" means any public or private entity that engages in friable-asbestos-containing material abatement in any facility in this state except private residences or apartment houses of less than six family units;

~~6. "Commissioner" means the Commissioner of Labor.~~

SECTION 6. AMENDATORY 40 O.S. 2001, Section 452, is amended to read as follows:

Section 452. A. No contractor shall abate any friable material containing asbestos without having first obtained a license to do so from the ~~Commissioner of Labor~~ Department of Environmental Quality. The ~~Commissioner~~ Department shall issue an asbestos abatement license to a qualified contractor upon proper application, as determined by the ~~Commissioner~~ Department. The annual fee for such license shall be Five Hundred Dollars (\$500.00). A nonrefundable initial application fee of One Thousand Dollars (\$1,000.00) shall be

charged. The ~~Commissioner~~ Department may deny a license to applicants whose past abatement performance for abatement of friable asbestos does not comply with federal and other states' requirements. A minimum waiting period of one hundred twenty (120) days will be required before issuance of a license to permit the ~~Commissioner~~ Department to perform a work performance investigation of the applicant.

The annual fee for examining and certifying workers employed by a contractor for asbestos abatement shall be Twenty-five Dollars (\$25.00). Uncertified workers shall not be used on any asbestos abatement projects.

B. The state and political subdivisions thereof, counties and political subdivisions thereof and municipalities and political subdivisions thereof, and their supervisors and employees, shall be exempt from any certification fees required by this section when such entities act as a contractor. Any contractor not performing abatement work which falls under the jurisdiction of the ~~Commissioner~~ Department during the period of the issued license shall be considered a new applicant for purposes of licensing and training.

C. A fee of Six Hundred Dollars (\$600.00) shall be paid by contractors to the Department of ~~Labor~~ Environmental Quality, to be deposited in the General Revenue Fund, for each separate containment area of any asbestos abatement project. ~~There shall be a minimum of three inspections of each containment area.~~ For projects which are not a part of a definite containment area, or are performed with multiple glovebags or miniature containments, a fee of Two Hundred Dollars (\$200.00), plus ~~Five Dollars (\$5.00)~~ One Dollar (\$1.00) per linear foot of such glovebag or miniature containment, shall be made.

Asbestos abatement projects performed on properties owned by the state or any political subdivision thereof shall be exempt from this fee.

D. Any asbestos abatement contractor transporting asbestos-containing material shall be required to provide to the ~~Commissioner~~ Department a Certificate of Insurance by a carrier licensed to do business in the State of Oklahoma demonstrating a minimum of One Million Dollars (\$1,000,000.00) of environmental impairment insurance.

E. No state agency or political subdivision thereof, county or political subdivision thereof, or municipalities or political subdivisions thereof shall solicit or receive any estimate or bid for abatement of asbestos from any person or party who is not a licensed asbestos abatement contractor.

SECTION 7. AMENDATORY 40 O.S. 2001, Section 453, is amended to read as follows:

Section 453. A. The ~~Commissioner of Labor~~ Environmental Quality Board with advice and recommendation from the Asbestos Advisory Council shall have the power and duty to:

~~1. Develop~~ develop and promulgate rules for the abatement of friable asbestos materials which shall be consistent with ~~general industry,~~ and not more stringent than, of applicable federal regulations standards.

B. The Executive Director of the Department of Environmental Quality shall have the power and duty to:

~~2.~~ 1. Instruct and examine contractors, employees and supervisors on the safe abatement of friable asbestos materials;

~~3. Hire sufficient personnel to carry out the provisions of this act consistent with funds allocated and full-time equivalent employees authorized;~~

~~4.~~ 2. Inspect ~~all~~ any asbestos abatement projects, to issue, modify and revoke orders; to issue cease and desist orders; and to

require mandamus and seek injunctive relief for enforcement of orders;

~~5.~~ 3. Inspect public buildings for the presence of friable asbestos materials;

~~6.~~ 4. Collect samples to determine the presence and condition of friable asbestos materials in public buildings;

~~7.~~ 5. Recommend appropriate abatement measures for friable asbestos materials in public buildings;

~~8. Make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under the Oklahoma Asbestos Control Act including, but not limited to, contracts with the United States, other states, agencies, and political subdivisions of this state;~~

~~9. Accept grants from the United States government, its agencies and instrumentalities, and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary and desirable;~~

~~10. Supervise, administer, and enforce the provisions of the Oklahoma Asbestos Control Act rules promulgated thereunder;~~

~~11. Hold hearings;~~

~~12. Institute legal proceedings, including suits for injunctions for the enforcement of his orders, rules, and for the enforcement of penalties;~~

~~13.~~ 6. Investigate any violations of the Oklahoma Asbestos Control Act; and

~~14.~~ 7. Exercise all incidental powers which are necessary to carry out the provisions of the Oklahoma Asbestos Control Act; and

8. Enforce the use of personal protective equipment, engineering controls, environmental protection, toxic substance control and other protective measures for asbestos abatement

consistent with but not more stringent than the requirements of applicable federal regulations.

~~B. C.~~ The violations of any rule shall be grounds for the ~~Commissioner~~ Department to evoke any penalties set forth in ~~Section 456 of this title~~ Sections 2-3-504 through 2-3-506 of Title 27A of the Oklahoma Statutes.

SECTION 8. AMENDATORY 40 O.S. 2001, Section 455, is amended to read as follows:

Section 455. The ~~Commissioner of Labor~~ Executive Director of the Department of Environmental Quality or an authorized representative shall have the power and authority to enter, upon proper warrant if necessary, at reasonable times upon any property for the purpose of inspecting and investigating contractors relating to the abatement of any friable material containing asbestos pursuant to the Oklahoma Asbestos Control Act.

SECTION 9. AMENDATORY 40 O.S. 2001, Section 456, is amended to read as follows:

Section 456. ~~A.~~ In addition to any administrative or civil penalty, any person who violates any of the provisions of the Oklahoma Asbestos Control Act or who violates any rule or order promulgated pursuant thereto shall be guilty of a misdemeanor and may be enjoined from continuing such action. Upon conviction thereof, said person shall be punished by imprisonment in the county jail for not more than six (6) months and by a fine of not less than One Hundred Dollars (\$100.00). Each day's violations shall constitute a separate violation.

~~B. The Attorney General shall, upon request of the Commissioner, bring an action for injunction against any person violating any provision of the Oklahoma Asbestos Control Act or violating any order or determination of the Commissioner. In any action for injunction, any finding of the Commissioner, after notice, shall be prima facie evidence of the facts found therein.~~

~~C. A district attorney, upon request of the Commissioner, shall prosecute any violation of the Oklahoma Asbestos Control Act.~~

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-16-107 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. All programs and functions pertaining to the Oklahoma Asbestos Control Act and all other functions and programs previously residing in the Asbestos Abatement Division of the Department of Labor are hereby transferred from the Department of Labor to the Department of Environmental Quality. With regard to all such programs and functions transferred and assigned, all rules of the Department of Labor, including fee schedules, relating to such programs and functions are hereby transferred to the Department of Environmental Quality for the purpose of maintaining and operating such programs and functions. Such rules shall remain in effect until superseded by rules promulgated by the Environmental Quality Board. By April 1, 2005, the Board shall have adopted new permanent rules to implement the programs and functions transferred to the Department.

B. 1. All unexpired or unrevoked licenses, permits, certifications or registrations issued prior to July 1, 2004, pursuant to the Oklahoma Asbestos Control Act and all other functions and programs previously residing in the Asbestos Abatement Division of the Department of Labor, shall remain valid for stated terms and conditions until otherwise provided by law. As of July 1, 2004, all licenses, permits, certifications or registrations shall be subject to the laws and rules of the Department of Environmental Quality.

2. All rights, obligations and remedies arising out of laws, rules, agreements and causes of action related to programs and functions residing in the Asbestos Abatement Division of the

Department of Labor are transferred to the Department of Environmental Quality.

3. Any application pending on June 30, 2004, before the Department of Labor for a license, permit, certification or registration to be issued pursuant to the Oklahoma Asbestos Control Act is hereby transferred to the Department of Environmental Quality.

C. The transfer of the programs and functions pertaining to the Oklahoma Asbestos Control Act and all other functions and programs previously residing in the Asbestos Abatement Division of the Department of Labor shall not operate to bar or negate any existing order, claim or cause of action transferred or available to the Department of Environmental Quality or its predecessor, nor shall it operate to affect enforcement action undertaken by the Department of Labor prior to such transfer to the Department of Environmental Quality. Violations of provisions of law, and violations of rules, permits or final orders which occurred prior to the transfer of jurisdiction and authority to the Department of Environmental Quality shall be subject to penalties available and existing at the time of violation.

D. All unexpended funds, documents, files, property, equipment, records and any outstanding financial obligations and encumbrances related to the activities of the Oklahoma Asbestos Control Act and all other functions and programs previously residing in the Asbestos Abatement Division of the Department of Labor are hereby transferred to the Department of Environmental Quality.

E. All employees of the Asbestos Abatement Division of the Department of Labor are hereby transferred to the Department of Environmental Quality except the Division Director. Those employees in the unclassified service at the time of their transfer shall remain in the unclassified service. Those employees who are classified at the time of their transfer shall remain in the

classified service. After transfer, the Department of Environmental Quality shall determine appropriate staffing levels and shall identify the positions necessary and appropriate to fully staff and implement the Oklahoma Asbestos Control Act. The Department of Environmental Quality is specifically authorized to implement a reduction-in-force plan for the programs and functions transferred from the Department of Labor to the Department to provide for necessary staffing levels.

F. 1. The State Auditor and Inspector shall determine the amount of funds from available budgetary resources for the Asbestos Abatement Division of the Department of Labor for the Oklahoma Asbestos Control Act, including any appropriated funds, revolving funds, or sinking funds, that are to be transferred on July 1, 2004, from the Department of Labor to the Department of Environmental Quality to continue operation of the Oklahoma Asbestos Control Act for the fiscal year ending June 30, 2005. In addition, the State Auditor and Inspector shall determine the amount that should be reserved to the Department of Labor for payment of obligations incurred prior to July 1, 2004.

2. The State Auditor and Inspector shall consider relevant funding and expenditure history and projected expenditures and expenses related to the Asbestos Abatement Division and available budgetary resources for the Asbestos Abatement Division in determining the amount to be transferred.

3. The Director of the Office of State Finance is authorized and directed to coordinate and administer the funds transfer.

4. The funds transferred to the Department of Environmental Quality shall not be subject to any budgetary limits that may have attached to the funds when the funds were appropriated to the Department of Labor.

5. Any extraordinary costs incurred by the State Auditor and Inspector in performing the review may be subtracted from the amount

transferred on July 1, 2004, to the Department of Environmental Quality and paid to the State Auditor and Inspector.

G. By January 15, 2005, the Executive Director of the Department of Environmental Quality and the Asbestos Advisory Council shall submit recommendations, if any, for proposed statutory changes pertaining to the Oklahoma Asbestos Control Act.

SECTION 11. AMENDATORY 74 O.S. 2001, Section 61.6, as amended by Section 1, Chapter 37, O.S.L. 2002 (74 O.S. Supp. 2003, Section 61.6), is amended to read as follows:

Section 61.6 A. The Department of Central Services shall provide asbestos abatement services to public school, city, county, and state-owned facilities if the ~~State~~ Department of ~~Labor~~ Environmental Quality certifies the need for the services.

B. The Director of the Department of Central Services shall promulgate rules necessary to perform the duty of asbestos abatement.

C. The Department of Central Services may enter into contracts or interlocal agreements with counties and municipalities for asbestos abatement services.

D. The public entity shall encumber funds for the sole purpose of paying for the asbestos abatement services.

E. The public entity shall pay the amount pursuant to the contract or interlocal agreement authorized by subsection C of this section promptly upon project completion and the Department of Central Services shall deposit the funds in the Asbestos Abatement Revolving Fund.

F. The Department of Central Services shall determine whether a public school or state agency is capable of paying the cost of the asbestos abatement services. The Department of Central Services shall use funds appropriated for the purpose of asbestos abatement for state-owned and public school facility projects.

SECTION 12. RECODIFICATION 40 O.S. 2001, Sections 450, 451, 452, 453, 455 and 456, as amended by Sections 4, 5, 6, 7, 8 and 9 of this act, shall be recodified as Sections 2-16-101, 2-16-102, 2-16-103, 2-16-104, 2-16-105 and 2-16-106 of Title 27A of the Oklahoma Statutes respectively, unless there is created a duplication in numbering.

SECTION 13. REPEALER 40 O.S. 2001, Sections 454 and 457, are hereby repealed.

SECTION 14. This act shall become effective July 1, 2004.

SECTION 15. 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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