

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1019

By: Leist

AS INTRODUCED

An Act relating to environment and natural resources; amending 27A O.S. 2001, Section 1-1-201, which relates to the Oklahoma Environmental Quality Act; modifying definition; amending 27A O.S. 2001, Sections 2-4-101, 2-4-201, 2-4-301, 2-4-302, 2-4-303, 2-4-304 and 2-4-305, which relate to laboratory standards; modifying definitions; modifying terms; updating language; amending 27A O.S. 2001, Section 2-5-111, which relates to field citations; removing authority of certain councils; providing for hearings before administrative law judge; amending 27A O.S. 2001, Section 2-10-701, which relates to solid waste disposal sites; deleting reference to Oklahoma Landfill Closure Authority; repealing 27A O.S. 2001, Section 2-10-701.1, which relates to the Oklahoma Landfill Closure Authority; and declaring an emergency.

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

SECTION 1. AMENDATORY 27A O.S. 2001, Section 1-1-201, is amended to read as follows:

Section 1-1-201. As used in the Oklahoma Environmental Quality Act:

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

2. "Discharge" includes but is not limited to a discharge of a pollutant, and means any addition of any pollutant to waters of the state from any point source;

3. "Environment" includes the air, land, wildlife, and waters of the state;

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

5. "Groundwater protection agencies" include the:

- a. Oklahoma Water Resources Board,
- b. Oklahoma Corporation Commission,
- c. State Department of Agriculture,
- d. Department of Environmental Quality,
- e. Conservation Commission, and
- f. Department of Mines;

6. "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;

7. "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;

8. "Point source" means any discernible, confined and discrete conveyance or outlet including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure container, rolling stock or vessel or other floating craft from which pollutants are or may be discharged into waters of the state. The term "point source" shall not include agricultural storm water runoff and return flows from irrigated agriculture;

9. "Pollutant" includes but is not limited to 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;

10. "Pollution" means the presence in the environment of any substance, contaminant or pollutant, or any other alteration of the physical, chemical or biological properties of the environment or the release of any liquid, gaseous or solid substance into the environment in quantities which are or will likely create a nuisance or which render or will likely render the environment harmful or

detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property;

11. "Source" means any and all points of origin of any wastes, pollutants or contaminants whether publicly or privately owned or operated;

12. "State agencies with limited environmental responsibilities" means:

- a. the Department of Public Safety,
- b. the Department of Labor, and
- c. the Department of Civil Emergency Management;

13. "State environmental agency" includes the:

- a. Oklahoma Water Resources Board,
- b. Oklahoma Corporation Commission,
- c. State Department of Agriculture,
- d. Oklahoma Conservation Commission,
- e. Department of Wildlife Conservation,
- f. Department of Mines, and
- g. Department of Environmental Quality;

14. "Storm water" means rain water runoff, snow melt runoff, and surface runoff and drainage;

15. "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;

16. "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;

17. "Wastewater" includes any substance, including sewage, that contains any discharge from the bodies of human beings or animals,

or pollutants or contaminating chemicals or other contaminating wastes from domestic, municipal, commercial, industrial, agricultural, manufacturing or other forms of industry;

18. "Wastewater treatment" means any method, technique or process used to remove 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;

19. "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;

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 waters of the United States which are contained within the boundaries of, flow through or border upon this state or any portion thereof. Provided, waste treatment systems, including treatment ponds or lagoons designed to meet federal and state requirements other than cooling ponds as defined in the Clean Water Act or rules promulgated thereto and prior converted cropland are not waters of the state; 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 extent of the area from which water is supplied to such water well or wellfield.

SECTION 2. AMENDATORY 27A O.S. 2001, Section 2-4-101, is amended to read as follows:

Section 2-4-101. As used in this article:

1. "Acceptable results" means a result within limits determined on the basis of statistical procedures as prescribed by the Department;

~~2. "Certificate" means that document issued by the Department showing those parameters for which a laboratory has received certification;~~

~~3. "Certification" means the same as laboratory accreditation~~
"Accreditation" means the act of certifying that a laboratory maintains suitable standards and includes primary accreditation and reciprocity accreditation;

~~3. "Analyte" means the characteristics of a laboratory sample determined by an analytic laboratory testing procedure;~~

4. "Department" means the Department of Environmental Quality;

5. "Evaluation" means a review of the quality control and quality assurance procedures, recordkeeping, reporting procedures, methodology, personal qualifications, equipment, facilities and analytical technique of a laboratory for measuring or establishing specific parameters;

6. "Laboratory" means a facility that performs analyses to determine the chemical, physical, or biological properties of air, water, solid waste, hazardous waste, wastewater, or soil or subsoil materials or performs any other analyses related to environmental quality evaluations; and

~~7. "Parameter" means the characteristics of a laboratory sample determined by an analytic laboratory testing procedure~~ "Letters of accreditation" means a document issued by the Department showing those analytes for which a laboratory is accredited.

SECTION 3. AMENDATORY 27A O.S. 2001, Section 2-4-201, is amended to read as follows:

Section 2-4-201. A. The Department of Environmental Quality is authorized to acquire, operate and maintain laboratories to analyze samples:

1. From pollution studies ~~+~~ to:

~~2. To~~

a. obtain factual data to support any order, permit, function or program of the Department ~~+~~ ,

~~3. To~~

b. provide accurate information on wastewater flows and discharges or the chemical, physical or biological characteristics of wastewater ~~+~~ ,

~~4. To~~

c. check the operations of treatment or disposal systems or works to determine whether they meet plans and specifications approved by the Department ~~+~~ , and

~~5. To~~

d. provide laboratory service for individuals, cities, towns, counties, state institutions and other state and federal agencies;

~~6.~~ 2. From studies and investigations of any waste or pollutant entering treatment systems or waters of the state or any media in which the presence of a contaminant or pollutant is suspected; and

~~7.~~ 3. To provide such services and perform such other analyses as is necessary to implement and enforce the programs and functions under the jurisdiction of the Department pursuant to this Code.

B. The Board of Environmental Quality shall promulgate rules for laboratory services under this Code. The Board shall follow the procedures required by the Administrative Procedures Act for promulgation of such rules.

C. 1. The Board, pursuant to ~~Section 24 of this act~~ and the Administrative Procedures Act, shall promulgate as a rule a fee schedule based on actual cost of analyses and the costs of the provision of laboratory services. The schedule shall include fees for specific ~~parameters~~ analytes and procedures.

2. Fees charged pursuant to this section shall be paid into the Department of Environmental Quality Revolving Fund and shall only be used by the Department in administering the Department's environmental laboratory ~~pursuant to Section 24 of this act~~.

D. The Department may, if necessary to meet the demand for laboratory services, contract, pursuant to the provisions of the Central Purchasing Act, for the performance of analyses with laboratories ~~certified~~ accredited by the Department.

SECTION 4. AMENDATORY 27A O.S. 2001, Section 2-4-301, is amended to read as follows:

Section 2-4-301. The Department of Environmental Quality is hereby designated as the administrative agency for national environmental laboratory accreditation programs and shall:

1. Establish and administer the state water quality and environmental laboratory ~~certification~~ accreditation programs for laboratories which apply; and

2. Issue, modify, renew, reinstate, revoke, or suspend the ~~certification~~ accreditation of a laboratory or deny a new or renewal ~~certification~~ accreditation application.

SECTION 5. AMENDATORY 27A O.S. 2001, Section 2-4-302, is amended to read as follows:

Section 2-4-302. A. The Board of Environmental Quality shall promulgate rules for ~~certification~~ accreditation of privately and publicly owned laboratories for performance of environmental analyses ~~and for certification of laboratory operators for municipal wastewater works and municipal waterworks~~. The Board may also promulgate rules which adopt standards of a national environmental

laboratory accreditation program and the United States Environmental Protection Agency by reference.

B. The Board, pursuant to Section 2-2-101 of this title and the Administrative Procedures Act, shall promulgate rules for the assessment of reasonable fees to participating laboratories for the administrative costs of the ~~certification~~ accreditation program.

C. Fees charged pursuant to this section shall be paid into the Department of Environmental Quality Revolving Fund and shall only be used by the Department in administering the Department's laboratory ~~certification~~ accreditation program.

SECTION 6. AMENDATORY 27A O.S. 2001, Section 2-4-303, is amended to read as follows:

Section 2-4-303. A. Applications for ~~certification~~ accreditation shall be made in the form and manner established by the ~~Board~~ Department of Environmental Quality.

B. The Department may make on-site evaluations of applicant laboratories.

C. 1. Based upon completion of the criteria evaluation by the Department or other evaluations, the Department shall either issue or deny ~~certification~~ accreditation to an applicant laboratory.

2. Only those laboratories that meet Department rules shall be ~~certified~~ accredited. ~~A certificate~~ Letters of accreditation shall be issued only for the categories or ~~parameters~~ analytes for which the capabilities and adequacy of the laboratory ~~has~~ have been demonstrated.

3. Causes for denial of an application shall include, but not be limited to, the misrepresentation of or the omission of fact or facts from any ~~certification~~ accreditation application or the failure to demonstrate compliance with Board rules. If ~~certification~~ accreditation is denied, the Department shall give written notice to the applicant of such denial and the reasons therefor.

SECTION 7. AMENDATORY 27A O.S. 2001, Section 2-4-304, is amended to read as follows:

Section 2-4-304. A. The Department of Environmental Quality shall accept reports or laboratory analyses performed by certified accredited laboratories ~~unless the~~ but may reject analyses that were not performed in compliance with the Department's rules or the laboratory's ~~certification~~ accreditation. ~~The Department may reject reports or analyses from any certified laboratory not in compliance with terms of its certification or the Board's rules.~~ The Department ~~shall not~~ may require, ~~pursuant to rules promulgated by the Board,~~ that reports or laboratory analyses which are submitted ~~to the Department~~ pursuant to this Code, rules promulgated ~~thereunder,~~ and or permits and orders issued pursuant thereto shall be performed by laboratories ~~certified~~ accredited by the Department ~~unless~~ if the submission of reports or laboratory analyses performed by ~~a certified~~ an accredited laboratory is specifically required or authorized by this Code, rules promulgated thereto or federal law or federal regulations.

B. ~~For purposes of operational testing of municipal wastewater treatment systems and water supply systems,~~ The Department shall accept laboratory reports and analyses prepared and performed by ~~such system's laboratories operated by~~ Department-certified laboratory operators ~~certified by the Department~~ unless for operational testing of municipal wastewater treatment systems and water supply systems provided that the analyses were ~~not~~ performed in compliance with the Department's rules or the terms of the laboratory operator's certification.

C. Acceptance of such reports or analyses shall not preclude the Department from declining for cause to rely on such results or from requiring additional laboratory analyses or reports from the person submitting such analyses or reports.

SECTION 8. AMENDATORY 27A O.S. 2001, Section 2-4-305, is amended to read as follows:

Section 2-4-305. A. The Department of Environmental Quality may suspend, revoke, or refuse to renew in part or in whole the ~~certification~~ accreditation of any laboratory which does not continue to comply with Board of Environmental Quality rules or conditions of ~~certification~~ accreditation, or for cause, including but not limited to:

1. The knowing and willful falsification of data submitted to the Department;

2. The misrepresentation or omission of material data in any report submitted to any person relying on such report because of the laboratory's ~~certification~~ accreditation;

3. Failure to maintain or utilize approved quality control procedures, recordkeeping, reporting procedures, methodology, personnel requirements, equipment, facilities or analytical techniques on which the ~~certification~~ accreditation was issued;

4. Failure to achieve acceptable results on ~~performance evaluation~~ proficiency testing samples; or

5. For laboratories holding Department-issued ~~certification accreditation~~, the expiration, suspension or revocation of the laboratory's reciprocal out-of-state certification or accreditation.

B. The Department may conduct on-site evaluations of ~~certified accredited~~ laboratories.

SECTION 9. AMENDATORY 27A O.S. 2001, Section 2-5-111, is amended to read as follows:

Section 2-5-111. A. The Department of Environmental Quality shall have the authority, pursuant to rules of the Board, to implement a field citation program establishing appropriate violations for which field citations assessing administrative penalties may be issued. No citation shall assess a penalty in excess of One Thousand Dollars (\$1,000.00) per day, or part of a

day, per violation, nor exceed a combined limit of Five Thousand Dollars (\$5,000.00) per day. Provided further, no field citation shall be valid unless reviewed for legal sufficiency within ten (10) days of issuance.

1. Any person to whom a field citation is issued may elect to pay the penalty assessment or to request an enforcement hearing. The assessment shall become final and payable unless the request for hearing is made in writing within fifteen (15) days of the citation. Upon such request, the ~~enforcement hearing shall be promptly set before the Department unless the respondent requests that the enforcement hearing be set before the Council.~~ In such case the Department shall promptly schedule the enforcement hearing before ~~the Council~~ an administrative law judge for the Department and notify the respondent.

2. Payment of a penalty required by a field citation shall not be construed as an admission of liability or guilt and shall preclude further assessment of administrative penalties for the same violation. It shall not, however, be a defense to further enforcement by the Department for a subsequent violation or to an assessment of the statutory maximum penalty for criminal violations pursuant to other authority in the Oklahoma Clean Air Act.

3. In determining the amount of any penalty to be assessed pursuant to this section, the person issuing a field citation shall take into account the seriousness of the violation, any good faith efforts to comply with applicable requirements and other factors determined by rule to be relevant.

B. Qualifications of persons authorized to issue field citations shall be set by the Department, but shall include as a minimum:

1. Completion of a special course of study developed by the Department specifically for the training of persons for this purpose;

2. A minimum of three (3) years' experience in the air quality service enforcement program;

3. A job classification commensurate with the duties and responsibilities of the individual; and

4. Approval by the Executive Director.

SECTION 10. AMENDATORY 27A O.S. 2001, Section 2-10-701, is amended to read as follows:

Section 2-10-701. A. All disposal site owners shall provide a closure plan to the Department of Environmental Quality for approval which defines operational phases and includes cost estimates, and plans and specifications for final closure. A site may be closed in phases according to a closure plan approved by the Department.

1. Owners of landfills that receive household solid waste, defined as Municipal Solid Waste Landfill Facilities in the federal regulations adopted under Subtitle D of the federal Solid Waste Disposal Act, and owners of commercial nonhazardous industrial waste landfills shall provide for the maintenance and monitoring of such works for thirty (30) years. Provided, the owner of any landfill that stops receiving waste on or before April 9, 1994, and has completed final closure of the site on or before October 9, 1994, shall provide for the maintenance and monitoring of such site for eight (8) years after final closure has been completed. A permittee who stopped receiving waste at his permitted solid waste municipal landfill on or before April 9, 1994, may apply to the Department for a modification of his permit to operate an on-site solid waste transfer station, a yard-waste composting facility or a citizen's collection station. Provided no land disposal occurs, such site shall not require monitoring or financial assurance as a municipal solid waste landfill.

2. Generator owned and operated private industrial nonhazardous monofills shall only be required to have an eight-year postclosure period or such postclosure time period as may be mandated under the

federal Solid Waste Disposal Act. Generator owned and operated private industrial nonhazardous landfill disposal sites and all construction and demolition landfill disposal sites shall only be required to have an eight-year postclosure period or such postclosure time period as may be mandated under the federal Solid Waste Disposal Act or determined necessary by the Department on a case-by-case basis considering the nature of the waste disposed.

3. Disposal sites other than land disposal sites shall have a closure plan which would accomplish the removal and proper disposal of any remaining waste and the elimination of potential environmental health hazards.

B. The Department shall require that financial assurances be provided in an amount sufficient to cover the estimated cost of closure and any postclosure. The Department shall establish financial assurance mechanisms which will ensure that the funds necessary to meet the costs of closure, postclosure care and corrective action for known releases will be available whenever such funds are needed. An increase in financial assurance shall be required when any permittee deviates from the approved closure plan or when the cost of closure or postclosure is found to have increased. Owners of landfills that receive household solid waste shall increase financial assurance if corrective action is required.

C. 1. Disposal site owners as identified in subsection A of this section shall provide financial assurance to guarantee the performance of final closure and for any required postclosure as required by the Department pursuant to this section. Except in cases where owners utilize a financial test provided by rule, the state shall be the sole beneficiary of any such assurance solely for the cost of performance of closure and postclosure and shall have a security interest therein.

2. The financial assurance shall be in a form described in rules promulgated by the Environmental Quality Board or the owner

may provide the Department with cash or certificates of deposit payable to the Department of Environmental Quality Revolving Fund for deposit with the State Treasurer's Office.

3. Disposal site owners may satisfy the financial assurance requirements of this section by creating a trust in accordance with the federal regulations adopted under Subtitle D of the federal Solid Waste Disposal Act. Municipal solid waste disposal site owners may satisfy the financial assurance requirements of this section by creating an escrow account in accordance with Board rules adopted under the Oklahoma Solid Waste Management Act. These financial assurance mechanisms shall provide for payments by the disposal site owner which will allow for closure and corrective action obligations to be spread out over the economic life of the disposal site, but shall not exceed fifteen (15) years.

4. Owners of disposal sites which receive waste after April 9, 1994, shall provide financial assurance for closure and any applicable postclosure on or before April 9, 1995, unless such date is extended by the federal Environmental Protection Agency pursuant to Subtitle D of the federal Resource, Conservation and Recovery Act. If any disposal site owner fails to provide such financial assurance by the applicable deadline, the Department shall cause the landfill disposal site permit to be summarily suspended by order. The Department shall initiate the process of revoking the permit and may require closure of the landfill. This subsection shall not apply to units of the federal government.

5. Financial assurance provided prior to June 8, 1994, as a condition of issuance of any permit or any agreement with the Department shall continue in effect unless the permittee replaces such assurance with an additional mechanism or combination of mechanisms authorized by the Department.

6. In lieu of the performance guarantee mechanisms specified in this section, owners or operators of a nonhazardous industrial solid

waste landfill which is owned or operated by an industry or manufacturer for its exclusive noncommercial use may satisfy the financial assurance requirements for closure, postclosure and maintenance by meeting the requirements of a corporate financial test and corporate guarantee similar to that applicable to hazardous waste facilities.

7. Any unit of local government or public trust of which it is a beneficiary may satisfy financial assurance requirements for closure and, when required, postclosure, by participating in a statewide trust capable of guaranteeing performance of such closure and postclosure.

~~8. Private owners and operators of disposal sites required by this section to provide financial assurance may satisfy this obligation through participation in the Oklahoma Landfill Closure Authority, created pursuant to the provisions of Section 2-10-701.1 of this title.~~

~~9.~~ Solid waste transfer stations, processing facilities, or composting facilities are exempt from the financial assurance requirements of this section if they principally manage municipal solid waste.

D. When financial assurance is required, it shall remain in effect until closure and any postclosure is completed. The amount of such assurance shall be set by the Department and shall not be less than the anticipated cost of contracting for performance of each phase of the closure plan and postclosure. The Department may allow a reduction in the amount of assurance to reflect the anticipated costs which remain.

SECTION 11. REPEALER 27A O.S. 2001, Section 2-10-701.1, is hereby repealed.

SECTION 12. 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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