

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 54th Legislature (2014)

4 HOUSE BILL 2378

 By: Grau

7 AS INTRODUCED

8 An Act relating to environment and natural resources;
9 amending 27A O.S. 2011, Section 2-7-123, which
10 relates to the Oklahoma Hazardous Waste Management
11 Act; modifying notice requirements for certain
12 actions; eliminating liability for persons conducting
13 certain approved projects; providing requirements for
14 project plans; providing exceptions; and providing an
15 effective date.

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

15 SECTION 1. AMENDATORY 27A O.S. 2011, Section 2-7-123, is
16 amended to read as follows:

17 Section 2-7-123. A. Upon issuance of any permit issued
18 pursuant to the requirements of the Oklahoma Hazardous Waste
19 Management Act, the Department of Environmental Quality shall file
20 or cause to be filed a recordable notice of the permit in the land
21 records of the county in which the site is located. The notice
22 shall contain the legal description of the site as well as the terms
23 under which the permit was issued.

1 B. The Department shall file or cause to be filed a recordable
2 notice of remediation or related action taken pursuant to the
3 federal Comprehensive Environmental Response, Compensation and
4 Liability Act in the land records of the county in which the site is
5 located. The notice shall contain a legal description of the
6 affected property and shall identify all engineering controls used
7 to ensure the effectiveness of the remediation.

8 C. ~~When~~ The Department shall file or cause to be filed a
9 recordable notice of remediation or related action in the county
10 where the property is located when remediation of contaminated
11 property to risk-based standards is performed pursuant to this
12 subsection or subsection F of this section under an order of or a
13 remediation plan approved by the Department, ~~the Department shall~~
14 ~~file or cause to be filed a recordable notice of remediation taken~~
15 ~~in the land records of the county in which the property is located.~~
16 The notice shall contain a legal description of the affected
17 property and shall identify all engineering or other controls used
18 to ensure the effectiveness of the remediation.

19 D. The notices required in subsections B and C of this section
20 shall also contain a prohibition against engaging in any activities
21 that cause or could cause damage to the remediation or the
22 engineering controls, or recontamination of the soil or groundwater.
23 The notices shall also contain any appropriate restrictions on land
24 use or other activities that are incompatible with the cleanup

1 level, including, but not limited to, restrictions against
2 increasing the amount or extent of contamination or using
3 groundwater for drinking or irrigation purposes or redeveloping the
4 land for residential use. Any person who damages or interferes with
5 the remediation, the engineering controls, or continuing operation,
6 maintenance or monitoring of the site or who increases the amount or
7 extent of contamination is liable to repair the damage, remedy the
8 interference, or remediate the contamination, or for costs incurred
9 by the Department in doing so. The Department may take
10 administrative or civil action to recover costs or to compel
11 compliance with this subsection, including but not limited to
12 administrative penalties pursuant to the Oklahoma Hazardous Waste
13 Management Act.

14 E. Any notice filed pursuant to this section shall run with the
15 land. It may not be extinguished, limited, or impaired by
16 application of the provisions of ~~Section~~ Sections 71 through 85 of
17 Title 16 of the Oklahoma Statutes or the Uniform Unclaimed Property
18 Act.

19 F. An eligible person may be entitled to protections and
20 immunities as a voluntary "Good Samaritan" as provided in this
21 subsection after meeting all eligibility requirements and compliance
22 with an order or a detailed written plan of the proposed voluntary
23 reclamation project or water pollution abatement project. The
24 person seeking "Good Samaritan" status under this subsection shall

1 submit a plan to be approved by the Department and to be implemented
2 at a historical or orphaned mining site or other approved site
3 within the State of Oklahoma. The approved plan must demonstrate
4 that the activities conducted under the plan will accelerate a
5 partial or complete CERCLA-like cleanup and will result in
6 environmental improvement.

7 1. The activities of an eligible person volunteering to conduct
8 a project under this subsection shall not duplicate or interfere
9 with remedial actions being taken or overseen by a responsible party
10 or a state or federal agency at the site.

11 2. The Department may require evidence of the Good Samaritan's
12 financial ability to complete the proposed project.

13 3. No eligible person shall be liable for costs or damages or
14 be subject to administrative or civil liabilities or penalties as a
15 result of actions taken or omitted in the course of rendering
16 voluntary care, assistance or advice while conducting a project
17 under this section if the project is implemented and completed in
18 accordance with the approved plan.

19 4. The immunities provided in this subsection shall not apply
20 to any person:

21 a. whose act or omission caused in whole or in part such
22 actual or threatened pollution or who would otherwise
23 be liable therefor under state or federal law,

- 1 b. who receives compensation other than reimbursement for
2 out-of-pocket expenses for services in rendering such
3 assistance or advice,
4 c. whose act or omission constitutes gross negligence or
5 reckless, wanton or intentional misconduct, or
6 d. who discharges pollutants without a required National
7 Pollutant Discharge Elimination System (NPDES) permit
8 except at a historical or orphaned mining site or
9 other site approved by the Department's Executive
10 Director prior to commencement of work on the project.

11 SECTION 2. This act shall become effective November 1, 2014.

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13 COMMITTEE REPORT BY: COMMITTEE ON UTILITY AND ENVIRONMENTAL
14 REGULATION, dated 02/11/2014 - DO PASS.