SENATE FLOOR VERSION
April 3, 2014

ENGROSSED HOUSE
BILL NO. 2378 By: Grau of the House

and

Wyrick of the Senate

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. who receives compensation other than reimbursement for out-of-pocket expenses for services in rendering such assistance or advice,

c. whose act or omission constitutes gross negligence or reckless, wanton or intentional misconduct, or

d. who discharges pollutants without a required National Pollutant Discharge Elimination System (NPDES) permit except at a historical or orphaned mining site or other site approved by the Department's Executive Director prior to commencement of work on the project.

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

COMMITTEE REPORT BY: COMMITTEE ON ENERGY
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