

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 ENGROSSED SENATE
5 BILL NO. 1875

By: Rader of the Senate

and

O'Donnell of the House

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9 [Oil and Gas Produced Water and Waste Recycling and
10 Reuse Act - water and waste - codification -
11 effective date]

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

13 SECTION 1. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 86.6 of Title 52, unless there
15 is created a duplication in numbering, reads as follows:

16 This act shall be known and may be cited as the "Oil and Gas
17 Produced Water and Waste Recycling and Reuse Act".

18 SECTION 2. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 86.7 of Title 52, unless there
20 is created a duplication in numbering, reads as follows:

21 A. As used in this act:

22 1. "Commission" means the Oklahoma Corporation Commission;

23 2. "Constituent elements" means salts, metals, elements and
24 other mineralized substances that are naturally occurring and

1 dissolved, entrained or suspended in subterranean water in situ and
2 after extraction from the ground, suspended in the oil and gas
3 produced water and waste or as part of the brine, as defined in
4 paragraph 4 of Section 502 of Title 17 of the Oklahoma Statutes;

5 3. "Nonoperator" means persons, other than the operator,
6 contributing to the cost and expense of drilling and completing or
7 operating a well for the intended development and production of oil,
8 gas or other hydrocarbons, regardless of whether the well is
9 completed or produces any oil or gas;

10 4. "Oil and gas produced water and waste" means the fluid
11 containing salt or other mineralized substances, hydraulic
12 fracturing fluid, flowback water, formation water, injection water
13 and any chemicals added downhole, associated with the drilling
14 completion or production of an oil or gas well, incidental to or
15 extracted from hydrocarbon-bearing strata during the drilling.
16 Except as provided in Section 3 of this act, oil and gas produced
17 water and waste, including its constituent elements, shall not be
18 considered brine for purposes of the Oklahoma Brine Development Act;

19 5. "Operator" means the person authorized by the Corporation
20 Commission to drill, complete and operate a well for the intended
21 development and production of oil, gas or other hydrocarbons,
22 regardless of whether the well is completed or produces any;

23 6. "Person" means any individual, partnership, corporation,
24 limited liability company or any type of association;

1 7. "Recycled water" means oil and gas produced water and waste
2 that has been reconditioned or treated by mechanical or chemical
3 processes into a reusable form; and

4 8. "Treated constituents" means any chemical, compound or other
5 byproduct naturally occurring in the subterranean water that is
6 removed from oil and gas produced water and waste through
7 reconditioning or treating of the fluid by mechanical or chemical
8 processes.

9 B. The Legislature finds that oil and gas produced water and
10 waste has minimal or no intrinsic value without substantial
11 expenditures to process, treat or recycle the oil and gas produced
12 water and waste and declares it desirable, necessary and in the
13 public interest to designate the parties who shall own and be
14 responsible for the handling, transfer and disposition of the oil
15 and gas produced water and waste. The Legislature recognizes that
16 it has imposed upon the operator of an oil and gas lease a duty to
17 safely dispose of oil and gas produced water and waste, as defined
18 in this act. It is further found to be in the public interest to
19 foster, encourage and promote the development of methods and means
20 to economically process, treat and recycle oil and gas produced
21 water and waste for beneficial uses, including the commercial
22 extraction of constituent elements from the oil and gas produced
23 water and waste and to ensure appropriate disposal in accordance
24 with Corporation Commission rules.

1 C. Prior to its extraction from the ground, subterranean water,
2 including its constituent elements, is the property of the owner of
3 the surface estate, as defined in paragraph 9 of Section 802 of
4 Title 52 of the Oklahoma Statutes and shall be subject to the right
5 of the mineral owner or the oil and gas lessee of the mineral owner,
6 or both, to extract the subterranean water as part of the oil and
7 gas produced water and waste as is reasonably necessary for, or
8 incident to, the exploration, exploitation or extraction of
9 hydrocarbons. Nothing contained in this act shall be construed to:

10 1. Prevent the owner of the surface estate from being
11 considered the brine owner, as defined by paragraph 5 of Section 502
12 of Title 17 of the Oklahoma Statutes, for purposes of Section 3 of
13 this act or the Oklahoma Brine Development Act; or

14 2. Limit the ability of the owner or owners of the surface
15 estate to enter into any legally binding contract with persons for
16 the payment of money or other valuable consideration for the
17 extraction of subterranean water, including the constituent elements
18 contained therein, or brine, as defined in paragraph 4 of Section
19 502 of Title 17 of the Oklahoma Statutes, from the property of the
20 owner or owners. However, if said extraction of subterranean water
21 or brine is to be done as part of oil and gas operations, the
22 contract shall be entered into prior to the filing of the drilling
23 permit of the oil and/or gas well. If the contract is entered into
24 after the filing of the drilling permit of the oil and/or gas well,

1 the contract shall be with the operator, or with the consent of the
2 operator, any other person or persons. The operator shall not
3 withhold consent unreasonably. Any such contract and the use or
4 disposal of oil and gas produced water and waste, shall be subject
5 to the requirements and limitations set forth in Section 3 of this
6 act and subject to any and all applicable governmental laws, rules
7 and regulations and subordinate to any preexisting, legally binding,
8 arms-length contracts relating to the use or disposal of oil and gas
9 produced water and waste. Provided, however, that the contracts
10 shall not result in additional costs or delays to the rights of the
11 operator to extract subterranean water reasonably necessary for, or
12 incident to, the exploration, exploitation or extraction of
13 hydrocarbons. Evidence, in the form of an affidavit, of any
14 contract entered into under the terms of this act may be filed in
15 the office of the county clerk for the county in which the lands
16 described in the contract are located. The affidavit shall set out
17 the names and address of each party to the contract, the legal
18 description of the lands covered by the contract and the effective
19 date of the contract. Once filed, the affidavit shall serve as
20 constructive notice of the contract under this act.

21 D. 1. Subject to the requirements and limitations set forth in
22 subsection C of this section and Section 3 of this act and unless
23 otherwise provided by Corporation Commission order, an oil or gas
24

1 lease, brine lease, recycling agreement, surface use agreement,
2 contract, bill of sale or another legally binding document:

3 a. the operator or operators, and the nonoperator or
4 nonoperators, of an oil and/or gas well shall be the
5 owner or owners of the oil and gas produced water and
6 waste extracted from the ground through the borehole
7 of the oil or gas well, and

8 b. the operator or operators, and the nonoperator or
9 nonoperators, shall have the right to use, possess,
10 handle, dispose of, transfer, sell, convey, transport,
11 process, recycle, reuse or treat the produced water
12 and waste and shall also have the exclusive right to
13 obtain proceeds for any of the uses of the oil and gas
14 produced water and waste or some portion thereof,
15 including recycled water and treated constituents.

16 2. Subject to the requirements and limitations set forth in
17 subsection C of this section and Section 3 of this act and unless
18 otherwise provided by Corporation Commission order, oil or gas
19 lease, brine lease, recycling agreement, surface use agreement,
20 contract, bill of sale or another legally binding document, until
21 there is a transfer to another person, the operator or operators,
22 and the nonoperator or nonoperators, shall be responsible for the
23 use, disposition, transfer, sale, conveyance, transport, recycling,
24 reuse, treatment or disposal of the transferred oil and gas produced

1 water and waste, recycled water and treated constituents or any
2 other byproducts.

3 3. Subject to the requirements and limitations set forth in
4 subsection C of this section and Section 3 of this act and unless
5 otherwise provided by Corporation Commission order, an oil or gas
6 lease, brine lease, recycling agreement, surface use agreement,
7 contract, bill of sale or another legally binding document:

8 a. when oil and gas produced water and waste is
9 transferred to a person for the purpose of processing
10 or treating for subsequent beneficial use, disposal or
11 both, the transferred material, recycled water and
12 treated constituents shall be the property of that
13 person until such time that the person disposes of the
14 produced water and waste in accordance with Commission
15 rules or there is a transfer of the material to a
16 subsequent person, and

17 b. transferred oil and gas produced water and waste shall
18 be the property of such transferee and the transferees
19 shall have control of and responsibility for the
20 substance, including the right to use, possess,
21 handle, dispose of, transfer, sell, convey, transport,
22 process, recycle, reuse or treat the produced water
23 and waste and to obtain proceeds for any uses of the
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1 substance or any portion thereof, including recycled
2 water and treated constituents.

3 E. Except as provided in paragraph 1 of subsection D of this
4 section, a person is not liable in tort for consequences of
5 subsequent use of recycled water or treated constituents if that
6 person:

7 1. Processes oil and gas produced water and waste in order to
8 produce recycled water or treated constituents that are generally
9 considered in the oil and gas industry to be suitable for use in
10 connection with drilling, completion or production operations of oil
11 and gas or both; or

12 2. Transfers the recycled water or treated constituents, or
13 both, to another person for use in connection with oil and gas
14 drilling, completion or production operations.

15 This subsection shall not be construed to affect the liability
16 of a person in possession of oil and gas produced water and waste,
17 recycled water or treated constituents, or both, in an action
18 brought by a person for damages for personal injury, death or
19 property damage arising from a release of or exposure to any of
20 these substances.

21 F. A person who acquires possession of oil and gas produced
22 water and waste for the purpose of recycling it for subsequent
23 beneficial use may dispose of the oil and gas produced water and
24 waste, including recycled water, treated constituents or other

1 byproducts of the recycling process, in his or her permitted
2 disposal well or wells, regardless of the source or prior ownership
3 of the oil and gas produced water and waste. The disposal shall not
4 require a commercial disposal well permit from the Corporation
5 Commission but shall otherwise be subject to any other permit
6 restrictions applicable to disposal wells.

7 SECTION 3. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 86.8 of Title 52, unless there
9 is created a duplication in numbering, reads as follows:

10 Notwithstanding any other provision in this act, if oil and gas
11 produced water and waste is utilized for the purpose of processing
12 the produced water and waste by mechanical or chemical processes for
13 the extraction of constituent elements for commercial purposes, the
14 oil and gas produced water and waste shall be considered brine under
15 the Oklahoma Brine Development Act. The operating activity and the
16 ownership of the oil and gas produced water, including the
17 constituent elements contained therein, including the entitlement to
18 and sharing of proceeds from the extraction and sale of the
19 constituent elements or effluent, shall be subject to the Oklahoma
20 Brine Development Act and the operator or other person extracting or
21 utilizing the oil and gas produced water and waste shall comply with
22 the provisions of the act. The Oklahoma Brine Development Act shall
23 not apply to oil and gas produced water and waste that is reused or
24 recycled solely for the purpose of use in oil and gas operations.

SECTION 4. This act shall become effective November 1, 2020.

DIRECT TO CALENDAR.