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March 31, 2022

BILL NO. 3403

By: Boles and Marti of the
House

and

Allen of the Senate

An Act relating to oil and gas; amending 52 O.S. 2021, Section 86.7, which relates to oil and gas produced water and waste recycling and reuse; modifying definitions to allow thermal and other commercially viable technological processes; and providing an effective date.

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

SECTION 1. AMENDATORY 52 O.S. 2021, Section 86.7, is amended to read as follows:

Section 86.7 A. As used in this act:

1. "Commission" means the Oklahoma Corporation Commission;

2. "Constituent elements" means salts, metals, elements and other mineralized substances that are naturally occurring and dissolved, entrained or suspended in subterranean water in situ and after extraction from the ground, suspended in the oil and gas produced water and waste or as part of the brine, as defined in paragraph 4 of Section 502 of Title 17 of the Oklahoma Statutes;

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

6 4. "Oil and gas produced water and waste" means the fluid
7 containing salt or other mineralized substances, hydraulic
8 fracturing fluid, flowback water, formation water, injection water
9 and any chemicals added downhole, associated with the drilling
10 completion or production of an oil or gas well, incidental to or
11 extracted from hydrocarbon-bearing strata during the drilling.
12 Except as provided in Section ~~3~~ 86.8 of this ~~act~~ title, oil and gas
13 produced water and waste, including its constituent elements, shall
14 not be considered brine for purposes of the Oklahoma Brine
15 Development Act;

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

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

22 7. "Recycled water" means oil and gas produced water and waste
23 that has been reconditioned or treated by mechanical ~~or~~, chemical,
24

1 thermal, or any other commercially viable technological processes
2 available into a reusable form; and

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

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~~ this title and shall be subject to
5 the right of the mineral owner or the oil and gas lessee of the
6 mineral owner, or both, to extract the subterranean water as part of
7 the oil and gas produced water and waste as is reasonably necessary
8 for, or 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~~ 86.8
13 of this ~~act~~ title 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~~ 86.8 of
6 this ~~act~~ title and subject to any and all applicable governmental
7 laws, rules and regulations and subordinate to any preexisting,
8 legally binding, arms-length contracts relating to the use or
9 disposal of oil and gas produced water and waste. Provided,
10 however, that the contracts shall not result in additional costs or
11 delays to the rights of the operator to extract subterranean water
12 reasonably necessary for, or incident to, the exploration,
13 exploitation or extraction of hydrocarbons. Evidence, in the form
14 of an affidavit, of any contract entered into under the terms of
15 this act may be filed in the office of the county clerk for the
16 county in which the lands described in the contract are located.
17 The affidavit shall set out the names and address of each party to
18 the contract, the legal description of the lands covered by the
19 contract and the effective date of the contract. Once filed, the
20 affidavit shall serve as constructive notice of the contract under
21 this act.

22 D. 1. Subject to the requirements and limitations set forth in
23 subsection C of this section and Section ~~3~~ 86.8 of this ~~act~~ title
24 and unless otherwise provided by Corporation Commission order, an

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

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

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

17 2. Subject to the requirements and limitations set forth in
18 subsection C of this section and Section ~~3~~ 86.8 of this ~~act~~ title
19 and unless otherwise provided by Corporation Commission order, oil
20 or gas lease, brine lease, recycling agreement, surface use
21 agreement, contract, bill of sale or another legally binding
22 document, until there is a transfer to another person, the operator
23 or operators, and the nonoperator or nonoperators, shall be
24 responsible for the use, disposition, transfer, sale, conveyance,

1 transport, recycling, reuse, treatment or disposal of the
2 transferred oil and gas produced water and waste, recycled water and
3 treated constituents or any other byproducts.

4 3. Subject to the requirements and limitations set forth in
5 subsection C of this section and Section ~~3~~ 86.8 of this ~~act~~ title
6 and unless otherwise provided by Corporation Commission order, an
7 oil or gas lease, brine lease, recycling agreement, surface use
8 agreement, contract, bill of sale or another legally binding
9 document:

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

19 b. transferred oil and gas produced water and waste shall
20 be the property of such transferee and the transferees
21 shall have control of and responsibility for the
22 substance, including the right to use, possess,
23 handle, dispose of, transfer, sell, convey, transport,
24 process, recycle, reuse or treat the produced water

1 and waste and to obtain proceeds for any uses of the
2 substance or any portion thereof, including recycled
3 water and treated constituents.

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

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

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

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

22 F. A person who acquires possession of oil and gas produced
23 water and waste for the purpose of recycling it for subsequent
24 beneficial use may dispose of the oil and gas produced water and

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

8 SECTION 2. This act shall become effective November 1, 2022.

9 COMMITTEE REPORT BY: COMMITTEE ON ENERGY
10 March 31, 2022 - DO PASS
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