

1 **SENATE FLOOR VERSION**

2 February 16, 2023

3 SENATE BILL NO. 18

By: Rader of the Senate

4 and

5 Sims of the House

6
7
8 An Act relating to Oil and Gas Produced Water and
9 Waste Recycling and Reuse Act; amending 52 O.S. 2021,
10 Section 86.7, as amended by Section 1, Chapter 31,
11 O.S.L. 2022 (52 O.S. Supp. 2022, Section 86.7), which
12 relates to definitions, purpose, and operator rights
13 and responsibilities; modifying definition; excluding
14 certain persons from liability; updating statutory
15 reference; and providing an effective date.

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

17 SECTION 1. AMENDATORY 52 O.S. 2021, Section 86.7, as
18 amended by Section 1, Chapter 31, O.S.L. 2022 (52 O.S. Supp. 2022,
19 Section 86.7), is amended to read as follows:

20 Section 86.7. A. As used in ~~this act~~ the Oil and Gas Produced
21 Water and Waste Recycling and Reuse 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
dissolved, entrained or suspended in subterranean water in situ and
after extraction from the ground, suspended in the oil and gas

1 produced water and waste or as part of the brine, as defined in
2 paragraph 4 of Section 502 of Title 17 of the Oklahoma Statutes;

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

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

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

24

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

3 7. "Recycled water" means oil and gas produced water and waste
4 that has been reconditioned or treated by mechanical, chemical,
5 thermal, or any other commercially viable technological processes
6 available into a reusable form; and

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

13 B. The Legislature finds that oil and gas produced water and
14 waste has minimal or no intrinsic value without substantial
15 expenditures to process, treat or recycle the oil and gas produced
16 water and waste and declares it desirable, necessary and in the
17 public interest to designate the parties who shall own and be
18 responsible for the handling, transfer and disposition of the oil
19 and gas produced water and waste. The Legislature recognizes that
20 it has imposed upon the operator of an oil and gas lease a duty to
21 safely dispose of oil and gas produced water and waste, as defined
22 in ~~this act~~ the Oil and Gas Produced Water and Waste Recycling and
23 Reuse Act. It is further found to be in the public interest to
24 foster, encourage and promote the development of methods and means

1 to economically process, treat and recycle oil and gas produced
2 water and waste for beneficial uses, including the commercial
3 extraction of constituent elements from the oil and gas produced
4 water and waste and to ensure appropriate disposal in accordance
5 with Corporation Commission rules.

6 C. Prior to its extraction from the ground, subterranean water,
7 including its constituent elements, is the property of the owner of
8 the surface estate, as defined in paragraph 9 of Section 802 of this
9 title and shall be subject to the right of the mineral owner or the
10 oil and gas lessee of the mineral owner, or both, to extract the
11 subterranean water as part of the oil and gas produced water and
12 waste as is reasonably necessary for, or incident to, the
13 exploration, exploitation or extraction of hydrocarbons. Nothing
14 contained in ~~this act~~ the Oil and Gas Produced Water and Waste
15 Recycling and Reuse Act shall be construed to:

16 1. Prevent the owner of the surface estate from being
17 considered the brine owner, as defined by paragraph 5 of Section 502
18 of Title 17 of the Oklahoma Statutes, for purposes of Section 86.8
19 of this title or the Oklahoma Brine Development Act; or

20 2. Limit the ability of the owner or owners of the surface
21 estate to enter into any legally binding contract with persons for
22 the payment of money or other valuable consideration for the
23 extraction of subterranean water, including the constituent elements
24 contained therein, or brine, as defined in paragraph 4 of Section

1 502 of Title 17 of the Oklahoma Statutes, from the property of the
2 owner or owners. However, if said extraction of subterranean water
3 or brine is to be done as part of oil and gas operations, the
4 contract shall be entered into prior to the filing of the drilling
5 permit of the oil and/or gas well. If the contract is entered into
6 after the filing of the drilling permit of the oil and/or gas well,
7 the contract shall be with the operator, or with the consent of the
8 operator, any other person or persons. The operator shall not
9 withhold consent unreasonably. Any such contract and the use or
10 disposal of oil and gas produced water and waste, shall be subject
11 to the requirements and limitations set forth in Section 86.8 of
12 this title and subject to any and all applicable governmental laws,
13 rules and regulations and subordinate to any preexisting, legally
14 binding, arms-length contracts relating to the use or disposal of
15 oil and gas produced water and waste. Provided, however, that the
16 contracts shall not result in additional costs or delays to the
17 rights of the operator to extract subterranean water reasonably
18 necessary for, or incident to, the exploration, exploitation or
19 extraction of hydrocarbons. Evidence, in the form of an affidavit,
20 of any contract entered into under the terms of ~~this act~~ the Oil and
21 Gas Produced Water and Waste Recycling and Reuse Act may be filed in
22 the office of the county clerk for the county in which the lands
23 described in the contract are located. The affidavit shall set out
24 the names and address of each party to the contract, the legal

1 description of the lands covered by the contract and the effective
2 date of the contract. Once filed, the affidavit shall serve as
3 constructive notice of the contract under ~~this act~~ the Oil and Gas
4 Produced Water and Waste Recycling and Reuse Act.

5 D. 1. Subject to the requirements and limitations set forth in
6 subsection C of this section and Section 86.8 of this title and
7 unless otherwise provided by Corporation Commission order, an oil or
8 gas lease, brine lease, recycling agreement, surface use agreement,
9 contract, bill of sale or another legally binding document:

10 a. the operator or operators, and the nonoperator or
11 nonoperators, of an oil and/or gas well shall be the
12 owner or owners of the oil and gas produced water and
13 waste extracted from the ground through the borehole
14 of the oil or gas well, and

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

23 2. Subject to the requirements and limitations set forth in
24 subsection C of this section and Section 86.8 of this title and

1 unless otherwise provided by Corporation Commission order, oil or
2 gas lease, brine lease, recycling agreement, surface use agreement,
3 contract, bill of sale or another legally binding document, until
4 there is a transfer to another person, the operator or operators,
5 and the nonoperator or nonoperators, shall be responsible for the
6 use, disposition, transfer, sale, conveyance, transport, recycling,
7 reuse, treatment or disposal of the transferred oil and gas produced
8 water and waste, recycled water and treated constituents or any
9 other byproducts.

10 3. Subject to the requirements and limitations set forth in
11 subsection C of this section and Section 86.8 of this title and
12 unless otherwise provided by Corporation Commission order, an oil or
13 gas lease, brine lease, recycling agreement, surface use agreement,
14 contract, bill of sale or another legally binding document:

15 a. when oil and gas produced water and waste is
16 transferred to a person for the purpose of processing
17 or treating for subsequent beneficial use, disposal or
18 both, the transferred material, recycled water and
19 treated constituents shall be the property of that
20 person until such time that the person disposes of the
21 produced water and waste in accordance with Commission
22 rules or there is a transfer of the material to a
23 subsequent person, and
24

1 b. transferred oil and gas produced water and waste shall
2 be the property of such transferee and the transferees
3 shall have control of and responsibility for the
4 substance, including the right to use, possess,
5 handle, dispose of, transfer, sell, convey, transport,
6 process, recycle, reuse or treat the produced water
7 and waste and to obtain proceeds for any uses of the
8 substance or any portion thereof, including recycled
9 water and treated constituents.

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

14 1. Processes oil and gas produced water and waste in order to
15 produce recycled water or treated constituents that are generally
16 considered in the oil and gas industry to be suitable for use in
17 connection with drilling, completion or production operations of oil
18 and gas or both; ~~or~~

19 2. Transfers the recycled water or treated constituents, or
20 both, to another person for use in connection with oil and gas
21 drilling, completion or production operations; or

22 3. Captures or sequesters hydrogen sulfides and carbon oxides
23 in connection with natural gas production for the purpose of
24 protecting the environment.

1 This subsection shall not be construed to affect the liability
2 of a person in possession of oil and gas produced water and waste,
3 recycled water or treated constituents, or both, in an action
4 brought by a person for damages for personal injury, death or
5 property damage arising from a release of or exposure to any of
6 these substances.

7 F. A person who acquires possession of oil and gas produced
8 water and waste for the purpose of recycling it for subsequent
9 beneficial use may dispose of the oil and gas produced water and
10 waste, including recycled water, treated constituents or other
11 byproducts of the recycling process, in his or her permitted
12 disposal well or wells, regardless of the source or prior ownership
13 of the oil and gas produced water and waste. The disposal shall not
14 require a commercial disposal well permit from the Corporation
15 Commission but shall otherwise be subject to any other permit
16 restrictions applicable to disposal wells.

17 SECTION 2. This act shall become effective November 1, 2023.

18 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND TELECOMMUNICATIONS
19 February 16, 2023 - DO PASS
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