

ENROLLED SENATE
BILL NO. 610

By: Myers and Sparks of the
Senate

and

Watson of the House

An Act relating to environment and natural resources; creating the Oklahoma Carbon Capture and Geologic Sequestration Act; providing short title; declaring legislative findings; stating legislative intent; defining terms; defining agency regulatory jurisdiction; requiring certain agreement; requiring applicants to obtain permit for operation of a carbon sequestration facility from the appropriate regulatory agency; authorizing agencies to promulgate rules; requiring notification; authorizing agencies to administer certain federal laws relating to carbon sequestration; stating ownership of certain substances; stating exception; authorizing extraction of carbon dioxide; excluding facility operators from certain plugging obligations and removal of surface equipment; stating priority of certain acts and rights; providing for agency regulation over certain activities; prohibiting right of eminent domain; amending 17 O.S. 2001, Section 52, which relates to jurisdiction of the Corporation Commission; modifying agency jurisdiction; stating exception; amending 27A O.S. 2001, Section 1-3-101, as last amended by Section 11, Chapter 430, O.S.L. 2004 (27A O.S. Supp. 2008, Section 1-3-101), which relates to jurisdiction for state environmental agencies; modifying jurisdiction of certain agencies; stating exception; amending 52 O.S. 2001, Section 139, which relates to the jurisdiction of the Corporation Commission; modifying jurisdiction relating to certain carbon

sequestration facilities; stating exception; providing for codification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-5-101 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Oklahoma Carbon Capture and Geologic Sequestration Act".

B. The Legislature finds and declares that:

1. Carbon dioxide is a valuable commodity to the citizens of the state, particularly for its value in enhancing the recovery of oil and gas and for its use in other industrial and commercial processes and applications;

2. Carbon dioxide is a gas produced when carbon is oxidized by any process, including the combustion of material that contains carbon such as coal, natural gas, oil and wood, all of which exist in abundance in our state, and the production and use of which form one of the foundations of our state's economy;

3. Carbon dioxide is currently being released into the atmosphere in substantial volumes;

4. In 1982, Oklahoma became the first state in the Union to inject anthropogenic carbon dioxide underground. Since that time, the continued injection of carbon dioxide has benefited the citizens of the state by assisting enhanced oil recovery efforts. When carbon dioxide is injected for enhanced oil recovery and not otherwise vented, emitted or removed, such carbon dioxide is sequestered and/or stored underground;

5. In its first 100 years, Oklahoma produced approximately 15 billion barrels of oil. The Department of Energy for the United

States has determined that Oklahoma has the potential to produce at least 9 billion barrels of oil and possibly as much as 20 billion barrels of oil through the use of carbon dioxide in enhanced oil recovery. To fully produce those natural resources, additional regulation is not necessary or appropriate but state incentives may be helpful;

6. Storage of carbon dioxide in geological formations is an effective and feasible strategy to deposit, store or sequester large volumes of carbon dioxide over long periods of time;

7. Geologic storage and sequestration of carbon dioxide allows for the capture of carbon dioxide emissions and the orderly withdrawal of the carbon dioxide as appropriate or necessary, thereby allowing carbon dioxide to be available for commercial, industrial, or other uses, including enhanced oil or gas recovery;

8. The transportation of carbon dioxide to, and the storage or sequestration of carbon dioxide in, underground geological formations for beneficial use or reuse in industrial and commercial applications is expected to increase in the United States and in Oklahoma due to initiatives by federal, state and local governments, industry and commerce, and other interested persons, and may present an opportunity for economic growth and development for the state; and

9. It remains in the public interest for carbon dioxide to be injected underground in this state. The geologic sequestration and storage of anthropogenic carbon dioxide for purposes other than injection for enhanced oil or gas recovery will benefit the citizens of the state.

C. It is the intent of the Legislature that:

1. Efforts to capture, purify, compress, transport, inject, and store or sequester carbon dioxide will enhance the production of oil and natural gas in the state, further the development and production of natural resources in the state, and provide opportunities for economic growth and development for the state; and

2. In the event the State of Oklahoma establishes a unitization process to support the establishment of CO₂ sequestration facilities

in this state, the Corporation Commission shall regulate all aspects of such process, including being responsible for making any necessary findings concerning the suitability of the reservoir targeted for carbon sequestration, whether its use for such purpose is in the public interest, and the impact of that use on the oil, gas, coal-bed methane and mineral brine resources in the State of Oklahoma.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-5-102 of Title 27A, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Carbon Capture and Geologic Sequestration Act:

1. "Agency" means the Corporation Commission or the Department of Environmental Quality, as the case may be and as described in Section 3 of this act;

2. "Anthropogenic carbon dioxide" or "man-made carbon dioxide" means the carbon dioxide compound manufactured, mechanically formed or otherwise caused to occur, as a result of either:

- a. a chemical process performed by or involving efforts of a person, or
- b. separation of carbon dioxide from natural gas.

The term shall not include carbon dioxide that is naturally present in underground locations;

3. "Approved reservoir" means a reservoir that is determined by the Agency with jurisdiction to be suitable for the receipt, storage and/or sequestration of injected carbon dioxide therein;

4. "Carbon dioxide" or "CO₂" means an inorganic compound containing one carbon atom and two oxygen atoms, and exists as a gas at standard temperature and pressure. Carbon dioxide is an inert, stable, colorless, odorless, non-toxic, incombustible, inorganic gas that is dissolvable in water and is naturally present, such as in underground locations and in the atmosphere as a trace gas;

5. "Carbon sequestration" means long-term or short-term underground storage or sequestration of anthropogenic carbon dioxide in one or more reservoirs;

6. "CO₂ injection well" means an artificial excavation or opening in the ground made by digging, boring, drilling, jetting, driving, or another method and is used to inject or transmit anthropogenic carbon dioxide into one or more reservoirs;

7. "CO₂ capture and compression equipment" means the equipment, separation units, processing units, processing plants, pipe, buildings, pumps, compressors, meters, facilities, motors, fixtures, materials, and machinery, and all other improvements used in the operation of any of them, and property, real or personal, intangible or tangible, either attributable to or relating to, or located thereon, used for the purpose of:

- a. capturing carbon dioxide from a source that produces anthropogenic carbon dioxide, and/or
- b. compressing or otherwise increasing the pressure of anthropogenic carbon dioxide;

8. "CO₂ pipeline" means any pipeline, compressors, pumps, meters, facilities, valves, fittings, right-of-way markers, cathodic protection ground beds, anodes, rectifiers, and any other cathodic protection devices, and other associated equipment, appurtenances and fixtures located on, attributable to or used in connection with the same, and used for the purpose of transporting carbon dioxide for carbon sequestration in this state or another state, excluding:

- a. CO₂ capture and compression equipment at the source of the carbon dioxide, and
- b. pipelines that are part of a CO₂ sequestration facility;

9. "CO₂ sequestration facility" means the approved reservoir(s), and all associated underground equipment and pipelines, all associated surface buildings and equipment, and all associated CO₂ injection wells, utilized for carbon sequestration in a defined geographic boundary established by the Agency, excluding any:

- a. CO₂ capture and compression equipment at the source of the carbon dioxide, and
- b. CO₂ pipeline transporting carbon dioxide to the facility from a source located outside the geographic boundaries of the surface of the facility;

10. "Commission" means the Corporation Commission as established by Section 15 of Article 9 of the Oklahoma Constitution;

11. "Common source of supply" shall have the same meaning as in Section 86.1 of Title 52 of the Oklahoma Statutes;

12. "Department" means the Department of Environmental Quality as established by Section 2-3-101 et seq. of Title 27A of the Oklahoma Statutes;

13. "Enhanced oil or gas recovery" means the increased recovery of hydrocarbons, including oil and gas, from a common source of supply achieved by artificial means or by the application of energy extrinsic to the common source of supply, such as pressuring, cycling, pressure maintenance or injection of a substance or form of energy, such as injection of water and/or carbon dioxide, including immiscible and miscible floods; provided that enhanced oil or gas recovery shall not include injection of a substance or form of energy for the sole purpose of either:

- a. aiding in the lifting of fluids in the well, or
- b. stimulation of the reservoir at or near the well by mechanical, chemical, thermal or explosive means;

14. "Facility operator" means any person authorized by the Agency to operate a CO₂ sequestration facility;

15. "Facility owner" means the person who owns the CO₂ sequestration facility;

16. "Gas" shall have the same meaning as in Section 86.1 of Title 52 of the Oklahoma Statutes;

17. "Governmental entity" means any department, commission, authority, council, board, bureau, committee, legislative body, agency, beneficial public trust, or other establishment of the executive, legislative or judicial branch of the United States, the State of Oklahoma, any other state in the United States, the District of Columbia, the Territories of the United States, and any similar entity of any foreign country;

18. "Oil" shall have the same meaning as in Section 86.1 of Title 52 of the Oklahoma Statutes;

19. "Person" means any individual, proprietorship, association, firm, corporation, company, partnership, limited partnership, limited liability company, joint venture, joint stock company, syndicate, trust, organization, committee, club, governmental entity, or other type of legal entity, or any group or combination thereof either acting in concert or as a unit;

20. "Private operator" means any person that is either a facility operator or an operator of a CO₂ pipeline, but that is neither a public utility nor a common carrier as such terms are defined by Oklahoma statutes; and

21. "Reservoir" means any portion of a separate and distinct geologic or subsurface sedimentary stratum, formation, aquifer, cavity or void, whether naturally occurring or artificially created, including an oil or gas formation, saline formation, or coal seam.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-5-103 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Corporation Commission shall be the "Agency" for, and shall have exclusive jurisdiction over CO₂ sequestration facilities involving, and injection of CO₂ for carbon sequestration into, oil reservoirs, gas reservoirs, coal-bed methane reservoirs, and mineral brine reservoirs. The Commission shall have such jurisdiction regardless of whether such CO₂ sequestration facility or other injection of carbon dioxide involves enhanced oil or gas recovery.

B. The Department of Environmental Quality shall be the "Agency" for, and shall have exclusive jurisdiction over CO₂

sequestration facilities involving, and injection of CO₂ for carbon sequestration into all reservoirs other than those described in subsection A of this section, which shall include, but not be limited to, deep saline formations, unmineable coal seams where methane is not produced, basalt reservoirs, salt domes, and non-mineral bearing shales.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-5-104 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Corporation Commission and the Department of Environmental Quality shall execute a Memorandum of Understanding to address areas in which the implementation of this act will require interagency cooperation or interaction, including procedures for directing applicants through the application process.

B. The operator of a CO₂ sequestration facility shall obtain a permit pursuant to this act from the Agency having jurisdiction prior to the operation of a CO₂ sequestration facility, after the Operator provides notice of the application for such permit pursuant to subsection D of this section, and the Agency has a hearing thereon upon request; provided that no permit pursuant to this act is required if the facility operator obtains permission, by permit or order, by the Agency pursuant to the rules and regulations of the state's federally approved Underground Injection Control Program and such permission authorizes carbon sequestration or injection of carbon dioxide underground and incorporates any additional requirements adopted pursuant to subsection C of this section.

C. To the extent not already authorized by laws governing the state's federally approved Underground Injection Control Program, the Agency having jurisdiction may issue and enforce such orders, and may adopt, modify, repeal and enforce such rules, including establishment of appropriate and sufficient fees, financial sureties or bonds, and monitoring at CO₂ sequestration facilities, as may be necessary, for the purpose of regulating the drilling of CO₂ injection wells related to a CO₂ sequestration facility, the injection and withdrawal of carbon dioxide, the operation of the CO₂ sequestration facility, CO₂ injection well plugging and abandonment, removal of surface buildings and equipment of the CO₂ sequestration

facility and for any other purpose necessary to implement the provisions of this act.

D. The applicant for any permit to be issued pursuant to this act shall give all surface owners and mineral owners, including working interest and royalty owners, of the land to be encompassed within the defined geographic boundary of the CO₂ sequestration facility as established by the Agency, and whose addresses are known or could be known through the exercise of due diligence, at least fifteen (15) days' notice of the hearing by mail, return receipt requested. The applicant shall also give notice by one publication, at least fifteen (15) days prior to the hearing, in some newspaper of general circulation published in Oklahoma County, and by one publication, at least fifteen (15) days prior to the date of the hearing, in some newspaper published in the county, or in each county, if there be more than one, in which the defined geographic boundary of the CO₂ sequestration facility, as established by the Agency, is situated. The applicant shall file proof of publication and an affidavit of mailing with the Agency prior to the hearing.

E. In addition to all other powers and duties prescribed in this act or otherwise by law, and unless otherwise specifically set forth in this act, the Agency having jurisdiction shall have the authority to perform any and all acts necessary to carry out the purposes and requirements of the federal Safe Drinking Water Act, as amended, relating to this state's participation in the federal Underground Injection Control Program established under that act with respect to the storage and/or sequestration of carbon dioxide.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-5-105 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Unless otherwise expressly provided by a contract, bill of sale, deed, mortgage, deed of trust, or other legally binding document or by other law, carbon dioxide injected into a CO₂ sequestration facility is considered to be the personal property of the facility owner.

B. Absent a final judgment of willful abandonment rendered by a court of competent jurisdiction, or a regulatory determination of willful abandonment, carbon dioxide injected into a CO₂ sequestration

facility is not considered to be the property of the owner of the surface or mineral estate in the land encompassing the geographic boundary of the CO₂ sequestration facility, or any person claiming under the owner of the surface or mineral estate.

C. The facility operator, with permission of the facility owner, may produce, take, extract or reduce to possession any carbon dioxide injected, stored or sequestered in a CO₂ sequestration facility. In the event an operator informs the Commission that it intends to conduct enhanced oil or gas recovery operations on a compulsory unit formed pursuant to Section 287.1 et seq. of Title 52 of the Oklahoma statutes, or its predecessor unitization act, then during the time that such unit is in operation, such operator shall be relieved of any obligation to either:

1. Plug and abandon any injection or production well within such unit that is intended to be used in such enhanced oil or gas recovery operations, unless required by the Commission pursuant to Section 53 of Title 17 of the Oklahoma Statutes; or

2. Remove any surface equipment that is associated with any such well and intended to be used in such enhanced oil or gas recovery operations, or both.

D. The Agency having jurisdiction over the injection of carbon dioxide under this act shall also have jurisdiction over a facility operator that produces, takes, extracts or reduces to possession any injected, stored or sequestered carbon dioxide in a CO₂ sequestration facility.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-5-106 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Nothing in this act shall supersede the provisions of the Oklahoma Carbon Sequestration Enhancement Act, Section 3-4-101 et seq. of Title 27A of the Oklahoma Statutes.

B. Nothing in this act shall alter the incidents of ownership, or other rights, of the owners of the mineral estate or adversely affect enhanced oil or gas recovery efforts in the state.

C. Any right granted to a facility operator pursuant to this act shall be without prejudice to the rights of any surface owner or mineral owner, including working interest and royalty owner, of the land encompassed within the defined geographic boundary of the CO₂ sequestration facility, as established by the Agency, to drill or bore through the approved reservoir in a manner as shall comply with orders, rules and regulations issued for the purpose of protecting the approved reservoir against the escape of CO₂. For purposes of this subsection, the Agency with jurisdiction under other state law for regulating the well being drilled or bored through the approved reservoir is the Agency having jurisdiction to adopt orders and rules for such well in order to protect the CO₂ sequestration facility, regardless of which Agency has jurisdiction to permit the CO₂ sequestration facility pursuant to Section 3 of this act. If the Agency with jurisdiction under other state law for regulating the well being drilled or bored through the approved reservoir is not the Agency that has jurisdiction to permit the CO₂ sequestration facility pursuant to Section 3 of this act, then the former shall promptly notify the latter in writing of the receipt of an application for the drilling or boring of such a well and shall consider all timely submitted comments of the latter in approving, denying, or setting conditions for the well being drilled or bored. The additional cost of complying with such orders, rules or regulations in order to protect the CO₂ sequestration facility shall be borne by the facility operator.

D. Nothing in this act shall grant a private operator the right of condemnation or eminent domain for any purpose.

SECTION 7. AMENDATORY 17 O.S. 2001, Section 52, is amended to read as follows:

Section 52. A. 1. Except as otherwise provided by this section, the Corporation Commission is hereby vested with exclusive jurisdiction, power and authority with reference to:

- a. the conservation of oil and gas,
- b. field operations for geologic and geophysical exploration for oil, gas and brine, including seismic survey wells, stratigraphic test wells and core test wells,

- c. the exploration, drilling, development, producing or processing for oil and gas on the lease site,
- d. the exploration, drilling, development, production and operation of wells used in connection with the recovery, injection or disposal of mineral brines,
- e. reclaiming facilities only for the processing of salt water, crude oil, natural gas condensate and tank bottoms or basic sediment from crude oil tanks, pipelines, pits and equipment associated with the exploration, drilling, development, producing or transportation of oil or gas,
- f. injection wells known as Class II wells under the federal Underground Injection Control Program, and any aspect of any CO₂ sequestration facility, including any associated CO₂ injection well, over which the Commission is given jurisdiction pursuant to the Oklahoma Carbon Capture and Geologic Sequestration Act. Any substance that the United States Environmental Protection Agency allows to be injected into a Class II well may continue to be so injected,
- g. tank farms for storage of crude oil and petroleum products which are located outside the boundaries of refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, or other facilities which are subject to the jurisdiction of the Department of Environmental Quality with regard to point source discharges,
- h. the construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum products, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or mineral brine during the course of transportation but not including line pipes in any:

(1) natural gas liquids extraction plant,

- (2) refinery,
 - (3) reclaiming facility other than for those specified within subparagraph e of this subsection,
 - (4) mineral brine processing plant, and
 - (5) petrochemical manufacturing plant,
- i. the handling, transportation, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and operating of oil and gas wells, at:
 - (1) any facility or activity specifically listed in paragraphs 1 and 2 of this subsection as being subject to the jurisdiction of the Commission, and
 - (2) other oil and gas extraction facilities and activities,
 - j. spills of deleterious substances associated with facilities and activities specified in paragraph 1 of this subsection or associated with other oil and gas extraction facilities and activities, and
 - k. subsurface storage of oil, natural gas and liquefied petroleum gas in geologic strata.

2. The exclusive jurisdiction, power and authority of the Corporation Commission shall also extend to the construction, operation, maintenance, site remediation, closure and abandonment of the facilities and activities described in paragraph 1 of this subsection.

3. When a deleterious substance from a Commission-regulated facility or activity enters a point source discharge of pollutants or storm water from a facility or activity regulated by the

Department of Environmental Quality, the Department shall have sole jurisdiction over the point source discharge of the commingled pollutants and storm water from the two facilities or activities insofar as Department-regulated facilities and activities are concerned.

4. For purposes of the Federal Clean Water Act, any facility or activity which is subject to the jurisdiction of the Corporation Commission pursuant to paragraph 1 of this subsection and any other oil and gas extraction facility or activity which requires a permit for the discharge of a pollutant or storm water to waters of the United States shall be subject to the direct jurisdiction of the United States Environmental Protection Agency and shall not be required to be permitted by the Department of Environmental Quality or the Corporation Commission for such discharge.

5. The Corporation Commission shall have jurisdiction over:

- a. underground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at upstream or intermediate shipment points of pipeline operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below; provided that any point source discharge of a pollutant to waters of the United States during site remediation or the off-site disposal of contaminated soil, media, or debris shall be regulated by the Department of Environmental Quality,
- b. aboveground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at upstream or intermediate shipment points of pipeline operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps,

hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below; provided that any point source discharge of a pollutant to waters of the United States during site remediation or the off-site disposal of contaminated soil, media, or debris shall be regulated by the Department of Environmental Quality, and

- c. the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund and Program and the Leaking Underground Storage Tank Trust Fund.

6. The Department of Environmental Quality shall have sole jurisdiction to regulate the transportation, discharge or release of deleterious substances or hazardous or solid waste or other pollutants from rolling stock and rail facilities. The Department of Environmental Quality shall not have any jurisdiction with respect to pipeline transportation of carbon dioxide.

7. The Department of Environmental Quality shall have sole environmental jurisdiction for point and nonpoint source discharges of pollutants and storm water to waters of the state from:

- a. refineries, petrochemical manufacturing plants and natural gas liquid extraction plants,
- b. manufacturing of oil and gas related equipment and products,
- c. bulk terminals, aboveground and underground storage tanks not subject to the jurisdiction of the Commission pursuant to this subsection, and
- d. other facilities, activities and sources not subject to the jurisdiction of the Corporation Commission or Department of Agriculture as specified by this section.

8. The Department of Environmental Quality shall have sole environmental jurisdiction to regulate air emissions from all facilities and sources subject to operating permit requirements under Title V of the Federal Clean Air Act as amended.

B. The Corporation Commission and incorporated cities and towns shall have exclusive jurisdiction over permit fees for the drilling and operation of oil and gas wells.

C. The Corporation Commission shall comply with and enforce the Oklahoma Water Quality Standards.

SECTION 8. AMENDATORY 27A O.S. 2001, Section 1-3-101, as last amended by Section 11, Chapter 430, O.S.L. 2004 (27A O.S. Supp. 2008, Section 1-3-101), is amended to read as follows:

Section 1-3-101. A. The provisions of this section specify the jurisdictional areas of responsibility for each state environmental agency and state agencies with limited environmental responsibility. The jurisdictional areas of environmental responsibility specified in this section shall be in addition to those otherwise provided by law and assigned to the specific state environmental agency; provided that any rule, interagency agreement or executive order enacted or entered into prior to the effective date of this section which conflicts with the assignment of jurisdictional environmental responsibilities specified by this section is hereby superseded. The provisions of this subsection shall not nullify any financial obligation arising from services rendered pursuant to any interagency agreement or executive order entered into prior to July 1, 1993, nor nullify any obligations or agreements with private persons or parties entered into with any state environmental agency before July 1, 1993.

B. Department of Environmental Quality. The Department of Environmental Quality shall have the following jurisdictional areas of environmental responsibility:

1. All point source discharges of pollutants and storm water to waters of the state which originate from municipal, industrial, commercial, mining, transportation and utilities, construction, trade, real estate and finance, services, public administration, manufacturing and other sources, facilities and activities, except as provided in subsections D and E of this section;

2. All nonpoint source discharges and pollution except as provided in subsections D, E and F of this section;

3. Technical lead agency for point source, nonpoint source and storm water pollution control programs funded under Section 106 of the federal Clean Water Act, for areas within the Department's jurisdiction as provided in this subsection;

4. Surface water and groundwater quality and protection and water quality certifications;

5. Waterworks and wastewater works operator certification;

6. Public and private water supplies;

7. Underground injection control pursuant to the federal Safe Drinking Water Act and 40 CFR Parts 144 through 148, except for:

a. Class II injection wells,

b. Class V injection wells utilized in the remediation of groundwater associated with underground or aboveground storage tanks regulated by the Corporation Commission, and

c. those wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act regulated by the Commission, and

d. any aspect of any CO₂ sequestration facility, including any associated CO₂ injection well, over which the Commission is given jurisdiction pursuant to the Oklahoma Carbon Capture and Geologic Sequestration Act;

8. Air Notwithstanding any other provision in this section or other environmental jurisdiction statute, sole and exclusive jurisdiction for air quality under the federal Clean Air Act and applicable state law, except for indoor air quality and asbestos as regulated for worker safety by the federal Occupational Safety and Health Act and by Chapter 11 of Title 40 of the Oklahoma Statutes;

9. Hazardous waste and solid waste, including industrial, commercial and municipal waste;

10. Superfund responsibilities of the state under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and amendments thereto, except the planning requirements of Title III of the Superfund Amendment and Reauthorization Act of 1986;

11. Radioactive waste and all regulatory activities for the use of atomic energy and sources of radiation except for the use of sources of radiation by diagnostic x-ray facilities;

12. Water, waste, and wastewater treatment systems including, but not limited to, septic tanks or other public or private waste disposal systems;

13. Emergency response as specified by law;

14. Environmental laboratory services and laboratory certification;

15. Hazardous substances other than branding, package and labeling requirements;

16. Freshwater wellhead protection;

17. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Department;

18. Utilization and enforcement of Oklahoma Water Quality Standards and implementation documents;

19. Environmental regulation of any entity or activity, and the prevention, control and abatement of any pollution, not subject to the specific statutory authority of another state environmental agency;

20. Development and maintenance of a computerized information system relating to water quality pursuant to Section 1-4-107 of this title; and

21. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional area of environmental responsibility.

C. Oklahoma Water Resources Board. The Oklahoma Water Resources Board shall have the following jurisdictional areas of environmental responsibility:

1. Water quantity including, but not limited to, water rights, surface water and underground water, planning, and interstate stream compacts;

2. Weather modification;

3. Dam safety;

4. Flood plain management;

5. State water/wastewater loans and grants revolving fund and other related financial aid programs;

6. Administration of the federal State Revolving Fund Program including, but not limited to, making application for and receiving capitalization grant awards, wastewater prioritization for funding, technical project reviews, environmental review process, and financial review and administration;

7. Water well drillers/pump installers licensing;

8. Technical lead agency for clean lakes eligible for funding under Section 314 of the federal Clean Water Act or other applicable sections of the federal Clean Water Act or other subsequent state and federal clean lakes programs; administration of a state program for assessing, monitoring, studying and restoring Oklahoma lakes with administration to include, but not be limited to, receipt and expenditure of funds from federal, state and private sources for clean lakes and implementation of a volunteer monitoring program to assess and monitor state water resources, provided such funds from federal Clean Water Act sources are administered and disbursed by the Office of the Secretary of Environment;

9. Statewide water quality standards and their accompanying use support assessment protocols, anti-degradation policy and implementation, and policies generally affecting Oklahoma Water Quality Standards application and implementation including but not limited to mixing zones, low flows and variances or any modification or change thereof pursuant to Section 1085.30 of Title 82 of the Oklahoma Statutes;

10. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Board;

11. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional area of environmental responsibility;

12. Development of classifications and identification of permitted uses of groundwater, in recognized water rights, and associated groundwater recharge areas;

13. Establishment and implementation of a statewide beneficial use monitoring program for waters of the state in coordination with the other state environmental agencies;

14. Coordination with other state environmental agencies and other public entities of water resource investigations conducted by the federal United States Geological Survey for water quality and quantity monitoring in the state; and

15. Development and submission of a report concerning the status of water quality monitoring in this state pursuant to Section 1-1-202 of this title.

D. Oklahoma Department of Agriculture, Food, and Forestry.

1. The Oklahoma Department of Agriculture, Food, and Forestry shall have the following jurisdictional areas of environmental responsibility except as provided in paragraph 2 of this subsection:

- a. point source discharges and nonpoint source runoff from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste,

- b. pesticide control,
- c. forestry and nurseries,
- d. fertilizer,
- e. facilities which store grain, feed, seed, fertilizer and agricultural chemicals,
- f. dairy waste and wastewater associated with milk production facilities,
- g. groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Department,
- h. utilization and enforcement of Oklahoma Water Quality Standards and implementation documents,
- i. development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility, and
- j. storm water discharges for activities subject to the jurisdictional areas of environmental responsibility of the Department.

2. In addition to the jurisdictional areas of environmental responsibility specified in subsection B of this section, the Department of Environmental Quality shall have environmental jurisdiction over:

- a. (1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,
- (2) slaughterhouses, but not including feedlots at these facilities, and

(3) aquaculture and fish hatcheries,

including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at these facilities, and

- b. facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

E. Corporation Commission.

1. The Corporation Commission is hereby vested with exclusive jurisdiction, power and authority, and it shall be its duty to promulgate and enforce rules, and issue and enforce orders governing and regulating:

- a. the conservation of oil and gas,
- b. field operations for geologic and geophysical exploration for oil, gas and brine, including seismic survey wells, stratigraphic test wells and core test wells,
- c. the exploration, drilling, development, producing or processing for oil and gas on the lease site,
- d. the exploration, drilling, development, production and operation of wells used in connection with the recovery, injection or disposal of mineral brines,
- e. reclaiming facilities only for the processing of salt water, crude oil, natural gas condensate and tank bottoms or basic sediment from crude oil tanks, pipelines, pits and equipment associated with the

exploration, drilling, development, producing or transportation of oil or gas,

f. underground injection control pursuant to the federal Safe Drinking Water Act and 40 CFR Parts 144 through 148, of:

(1) Class II injection wells,

(2) Class V injection wells utilized in the remediation of groundwater associated with underground or aboveground storage tanks regulated by the Commission, ~~and~~

(3) those wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act, and

(4) any aspect of any CO₂ sequestration facility, including any associated CO₂ injection well, over which the Commission is given jurisdiction pursuant to the Oklahoma Carbon Capture and Geologic Sequestration Act.

Any substance that the United States Environmental Protection Agency allows to be injected into a Class II well may continue to be so injected,

g. tank farms for storage of crude oil and petroleum products which are located outside the boundaries of refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, or other facilities which are subject to the jurisdiction of the Department of Environmental Quality with regard to point source discharges,

h. the construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum products, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or

mineral brine during the course of transportation but not including line pipes in any:

- (1) natural gas liquids extraction plant,
 - (2) refinery,
 - (3) reclaiming facility other than for those specified within subparagraph e of this subsection,
 - (4) mineral brine processing plant, and
 - (5) petrochemical manufacturing plant,
- i. the handling, transportation, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and operating of oil and gas wells, at:
- (1) any facility or activity specifically listed in paragraphs 1 and 2 of this subsection as being subject to the jurisdiction of the Commission, and
 - (2) other oil and gas extraction facilities and activities,
- j. spills of deleterious substances associated with facilities and activities specified in paragraph 1 of this subsection or associated with other oil and gas extraction facilities and activities,
- k. subsurface storage of oil, natural gas and liquefied petroleum gas in geologic strata,
- l. groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission,

- m. utilization and enforcement of Oklahoma Water Quality Standards and implementation documents, and
- n. development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility.

2. The exclusive jurisdiction, power and authority of the Commission shall also extend to the construction, operation, maintenance, site remediation, closure and abandonment of the facilities and activities described in paragraph 1 of this subsection.

3. When a deleterious substance from a Commission-regulated facility or activity enters a point source discharge of pollutants or storm water from a facility or activity regulated by the Department of Environmental Quality, the Department shall have sole jurisdiction over the point source discharge of the commingled pollutants and storm water from the two facilities or activities insofar as Department-regulated facilities and activities are concerned.

4. For purposes of the federal Clean Water Act, any facility or activity which is subject to the jurisdiction of the Commission pursuant to paragraph 1 of this subsection and any other oil and gas extraction facility or activity which requires a permit for the discharge of a pollutant or storm water to waters of the United States shall be subject to the direct jurisdiction of the federal Environmental Protection Agency and shall not be required to be permitted by the Department of Environmental Quality or the Commission for such discharge.

5. The Commission shall have jurisdiction over:

- a. underground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at the upstream or intermediate shipment points of pipeline operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk

distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below; provided, that any point source discharge of a pollutant to waters of the United States during site remediation or the off-site disposal of contaminated soil, media, or debris shall be regulated by the Department of Environmental Quality,

- b. aboveground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at the upstream or intermediate shipment points of pipeline operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below; provided, that any point source discharge of a pollutant to waters of the United States during site remediation or the off-site disposal of contaminated soil, media, or debris shall be regulated by the Department of Environmental Quality, and
- c. the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund, the Oklahoma Petroleum Storage Tank Release Indemnity Program, and the Oklahoma Leaking Underground Storage Tank Trust Fund.

6. The Department of Environmental Quality shall have sole jurisdiction to regulate the transportation, discharge or release of deleterious substances or solid or hazardous waste or other pollutants from rolling stock and rail facilities. The Department of Environmental Quality shall not have any jurisdiction with respect to pipeline transportation of carbon dioxide.

7. The Department of Environmental Quality shall have sole environmental jurisdiction for point and nonpoint source discharges of pollutants and storm water to waters of the state from:

- a. refineries, petrochemical manufacturing plants and natural gas liquid extraction plants,
- b. manufacturing of equipment and products related to oil and gas,
- c. bulk terminals, aboveground and underground storage tanks not subject to the jurisdiction of the Commission pursuant to this subsection, and
- d. other facilities, activities and sources not subject to the jurisdiction of the Commission or the Oklahoma Department of Agriculture, Food, and Forestry as specified by this section.

8. The Department of Environmental Quality shall have sole environmental jurisdiction to regulate air emissions from all facilities and sources subject to operating permit requirements under Title V of the federal Clean Air Act as amended.

F. Oklahoma Conservation Commission. The Oklahoma Conservation Commission shall have the following jurisdictional areas of environmental responsibility:

1. Soil conservation, erosion control and nonpoint source management except as otherwise provided by law;

2. Monitoring, evaluation and assessment of waters to determine the condition of streams and rivers being impacted by nonpoint source pollution. In carrying out this area of responsibility, the Oklahoma Conservation Commission shall serve as the technical lead agency for nonpoint source categories as defined in Section 319 of the federal Clean Water Act or other subsequent federal or state nonpoint source programs, except for activities related to industrial and municipal storm water or as otherwise provided by state law;

3. Wetlands strategy;

4. Abandoned mine reclamation;

5. Cost-share program for land use activities;

6. Assessment and conservation plan development and implementation in watersheds of clean lakes, as specified by law;

7. Complaint data management;

8. Coordination of environmental and natural resources education;

9. Federal upstream flood control program;

10. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission;

11. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility; and

12. Utilization of Oklahoma Water Quality Standards and Implementation documents; and

13. Verification and certification of carbon sequestration pursuant to the Oklahoma Carbon Sequestration Enhancement Act. This responsibility shall not be superseded by the Oklahoma Carbon Capture and Geologic Sequestration Act.

G. Department of Mines. The Department of Mines shall have the following jurisdictional areas of environmental responsibility:

1. Mining regulation;

2. Mining reclamation of active mines;

3. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission; and

4. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of responsibility.

H. Department of Wildlife Conservation. The Department of Wildlife Conservation shall have the following jurisdictional areas of environmental responsibilities:

1. Investigating wildlife kills;
2. Wildlife protection and seeking wildlife damage claims; and
3. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility.

I. Department of Public Safety. The Department of Public Safety shall have the following jurisdictional areas of environmental responsibilities:

1. Hazardous waste, substances and material transportation inspections as authorized by the Hazardous Materials Transportation Act; and
2. Inspection and audit activities of hazardous waste and materials carriers and handlers as authorized by the Hazardous Materials Transportation Act.

J. Department of Labor. The Department of Labor shall have the following jurisdictional areas of environmental responsibility:

1. Regulation of asbestos in the workplace pursuant to Chapter 11 of Title 40 of the Oklahoma Statutes;
2. Asbestos monitoring in public and private buildings; and
3. Indoor air quality as regulated under the authority of the Oklahoma Occupational Health and Safety Standards Act, except for those indoor air quality issues specifically authorized to be regulated by another agency.

Such programs shall be a function of the Department's occupational safety and health jurisdiction.

K. Oklahoma Department of Emergency Management. The Oklahoma Department of Emergency Management shall have the following jurisdictional areas of environmental responsibilities:

1. Coordination of all emergency resources and activities relating to threats to citizens' lives and property pursuant to the Oklahoma Emergency Resources Management Act of 1967;

2. Administer and enforce the planning requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986 and develop such other emergency operations plans that will enable the state to prepare for, respond to, recover from and mitigate potential environmental emergencies and disasters pursuant to the Oklahoma Hazardous Materials Planning and Notification Act;

3. Administer and conduct periodic exercises of emergency operations plans provided for in this subsection pursuant to the Oklahoma Emergency Resources Management Act of 1967;

4. Administer and facilitate hazardous materials training for state and local emergency planners and first responders pursuant to the Oklahoma Emergency Resources Management Act of 1967; and

5. Maintain a computerized emergency information system allowing state and local access to information regarding hazardous materials' location, quantity and potential threat.

SECTION 9. AMENDATORY 52 O.S. 2001, Section 139, is amended to read as follows:

Section 139. A. The Corporation Commission is vested with exclusive jurisdiction, power and authority, and it shall be its duty, to make and enforce such rules and orders governing and regulating the handling, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing, and operating of oil and gas wells and brine wells within this state as are reasonable and necessary for the purpose of preventing the pollution of the surface and subsurface waters in the state, and to otherwise carry out the purpose of this act.

B. 1. Except as otherwise provided by this subsection, the Corporation Commission is hereby vested with exclusive jurisdiction, power and authority, and it shall be its duty to promulgate and enforce rules, and issue and enforce orders governing and regulating:

- a. the conservation of oil and gas,
- b. field operations for geologic and geophysical exploration for oil, gas and brine, including seismic survey wells, stratigraphic test wells and core test wells,
- c. the exploration, drilling, development, producing or processing for oil and gas on the lease site,
- d. the exploration, drilling, development, production and operation of wells used in connection with the recovery, injection or disposal of mineral brines,
- e. reclaiming facilities only for the processing of salt water, crude oil, natural gas condensate and tank bottoms or basic sediment from crude oil tanks, pipelines, pits and equipment associated with the exploration, drilling, development, producing or transportation of oil or gas,
- f. injection wells known as Class II wells under the federal Underground Injection Control Program, and any aspect of any CO₂ sequestration facility, including any associated CO₂ injection well, over which the Commission is given jurisdiction pursuant to the Oklahoma Carbon Capture and Geologic Sequestration Act. Any substance that the United States Environmental Protection Agency allows to be injected into a Class II well may continue to be so injected,
- g. tank farms for storage of crude oil and petroleum products which are located outside the boundaries of the refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, or other facilities which are subject to the jurisdiction of

the Department of Environmental Quality with regard to point source discharges,

- h. the construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum products, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or mineral brine during the course of transportation but not including line pipes associated with processing at or in any:
 - (1) natural gas liquids extraction plant,
 - (2) refinery,
 - (3) reclaiming facility other than for those specified within subparagraph e of this paragraph,
 - (4) mineral brine processing plant, and
 - (5) petrochemical manufacturing plant,
- i. the handling, transportation, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and operating of oil and gas wells, at:
 - (1) any facility or activity specifically listed in paragraphs 1 and 2 of this subsection as being subject to the jurisdiction of the Commission, and
 - (2) other oil and gas extraction facilities and activities,
- j. spills of deleterious substances associated with facilities and activities specified in paragraph 1 of this subsection or associated with other oil and gas extraction facilities and activities, and

- k. subsurface storage of oil, natural gas and liquefied petroleum gas in geologic strata.

2. The exclusive jurisdiction, power and authority of the Corporation Commission shall also extend to the construction, operation, maintenance, site remediation, closure and abandonment of the facilities and activities described in paragraph 1 of this subsection.

3. When a deleterious substance from a Commission-regulated facility or activity enters a point source discharge of pollutants or storm water from a facility or activity regulated by the Department of Environmental Quality, the Department shall have sole jurisdiction over the point source discharge of the commingled pollutants and storm water from the two facilities or activities insofar as Department-regulated facilities and activities are concerned.

4. For purposes of the Federal Clean Water Act, any facility or activity which is subject to the jurisdiction of the Corporation Commission pursuant to paragraph 1 of this subsection and any other oil and gas extraction facility or activity which requires a permit for the discharge of a pollutant or storm water to waters of the United States shall be subject to the direct jurisdiction of the United States Environmental Protection Agency and shall not be required to be permitted by the Department of Environmental Quality or the Corporation Commission for such discharge.

5. The Corporation Commission shall have jurisdiction over:

- a. underground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at upstream or intermediate shipment points of pipeline operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below; provided that any point source discharge of a

pollutant to waters of the United States during site remediation or the off-site disposal of contaminated soil, media, or debris shall be regulated by the Department of Environmental Quality,

- b. aboveground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at upstream or intermediate shipment points of pipeline operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below; provided that any point source discharge of a pollutant to waters of the United States during site remediation or the off-site disposal of contaminated soil, media, or debris shall be regulated by the Department of Environmental Quality, and
- c. the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund and Program and the Leaking Underground Storage Tank Trust Fund.

6. The Department of Environmental Quality shall have sole jurisdiction to regulate the transportation, discharge or release of deleterious substances or hazardous or solid waste or other pollutants from rolling stock and rail facilities. The Department of Environmental Quality shall not have any jurisdiction with respect to pipeline transportation of carbon dioxide.

7. The Department of Environmental Quality shall have sole environmental jurisdiction for point and nonpoint source discharges of pollutants and storm water to waters of the state from:

- a. refineries, petrochemical manufacturing plants and natural gas liquid extraction plants,
- b. manufacturing of oil and gas related equipment and products,

- c. bulk terminals, aboveground and underground storage tanks not subject to the jurisdiction of the Commission pursuant to this subsection, and
- d. other facilities, activities and sources not subject to the jurisdiction of the Corporation Commission or Department of Agriculture as specified by this section.

8. The Department of Environmental Quality shall have sole environmental jurisdiction to regulate air emissions from all facilities and sources subject to operating permit requirements under Title V of the Federal Clean Air Act as amended.

C. The Corporation Commission shall comply with and enforce the Oklahoma Water Quality Standards.

D. 1. For the purpose of immediately responding to emergency situations having potentially critical environmental or public safety impact and resulting from activities within its jurisdiction, the Commission may take whatever necessary action, without notice and hearing, including the expenditure of monies from the Corporation Commission Revolving Fund, to promptly respond to the emergency. Such emergency expenditure shall be made pursuant to the provisions of the Oklahoma Central Purchasing Act, upon such terms and conditions established by the Department of Central Services to accomplish the purposes of this section. Thereafter, the Commission shall seek reimbursement from the responsible person, firm or corporation for all expenditures made from the Corporation Commission Revolving Fund. Any monies received as reimbursement shall be deposited to the credit of the Corporation Commission Revolving Fund.

2. The Commission shall not expend from any fund in the State Treasury, in any fiscal year, for the purposes herein provided, an amount of money in excess of the total sum specifically authorized annually by the Legislature for such purposes. Any monies received by the Commission through execution on any required surety shall not be subject to such limitation on expenditure for remedial action.

3. Neither the Commission nor any independent contractor of the Commission authorized to conduct remedial action under this section

shall be held liable or responsible for any damages resulting from non-negligent actions reasonably necessary for conducting remedial work. Nothing in this section shall limit the authority of the Commission or relieve any person or persons otherwise legally responsible from any obligation to prevent or remediate pollution.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 20th day of May, 2009.

Presiding Officer of the Senate

Passed the House of Representatives the 21st day of May, 2009.

Presiding Officer of the House
of Representatives