

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 966

BY: LONG (Ed) and CAPPS of the
SENATE

and

McCORKELL of the HOUSE

AS INTRODUCED

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY; CREATING
THE OKLAHOMA INDUSTRIAL POLLUTION PREVENTION AND
SAFE MATERIALS ACT; PROVIDING SHORT TITLE; DEFINING
TERMS; CREATING THE OKLAHOMA POLLUTION PREVENTION
PROGRAM WITHIN THE STATE DEPARTMENT OF HEALTH;
AUTHORIZING COMMISSIONER OF HEALTH TO EMPLOY
CERTAIN STAFF WITH CERTAIN QUALIFICATIONS; STATING
POWERS AND DUTIES OF OKLAHOMA POLLUTION PREVENTION
PROGRAM AND EMPLOYEES; CREATING THE INTERAGENCY
ADMINISTRATIVE COUNCIL ON POLLUTION PREVENTION;
STATING MEMBERSHIP OF COUNCIL; PROVIDING FOR
MEMBERS TO RECEIVE TRAVEL REIMBURSEMENT; STATING
PURPOSE AND DUTIES OF COUNCIL; ESTABLISHING THE
OKLAHOMA POLLUTION PREVENTION BOARD; STATING
MEMBERSHIP; STATING RESPONSIBILITIES OF BOARD;
PROVIDING FOR THE ESTABLISHMENT OF A POLLUTION
PREVENTION RESEARCH AND EDUCATION INSTITUTE WITHIN
A UNIVERSITY LOCATED WITHIN THE STATE OF OKLAHOMA;
AUTHORIZING THE OKLAHOMA POLLUTION PREVENTION BOARD
TO SELECT UNIVERSITY FOR INSTITUTE; PROVIDING
SELECTION PROCEDURES; STATING PURPOSE AND DUTIES OF

INSTITUTE; REQUIRING THE INSTITUTE TO ESTABLISH A TRAINING PROGRAM TO CERTIFY POLLUTION PREVENTION AUDITORS; STATING REQUIREMENTS FOR TRAINING PROGRAM; REQUIRING INSTITUTE TO SUBMIT CERTAIN REPORT TO GOVERNOR AND LEGISLATURE BY CERTAIN DATE; REQUIRING CERTAIN BUSINESSES TO COMPLETE CERTAIN INDUSTRIAL TOXICS USE REDUCTION PLAN; STATING REQUIREMENTS FOR PLAN; REQUIRING BUSINESSES TO REVIEW FEASIBILITY OF CERTAIN METHODS OF POLLUTION PREVENTION; REQUIRING REVIEW OF PLAN BY A CERTIFIED POLLUTION PREVENTION AUDITOR; REQUIRING BUSINESSES TO KEEP PLAN ON SITE AND AVAILABLE TO THE PUBLIC; REQUIRING CERTAIN BUSINESSES TO PROVIDE ANNUAL MASS-BALANCE INVENTORY TO THE OKLAHOMA POLLUTION PREVENTION PROGRAM BY CERTAIN DATE; REQUIRING CERTAIN INFORMATION BE REPORTED; AUTHORIZING THE OKLAHOMA POLLUTION PREVENTION PROGRAM TO PROMULGATE RULES TO ASSURE BUSINESSES THAT PROPRIETARY INFORMATION WILL REMAIN CONFIDENTIAL; PROVIDING PENALTY FOR VIOLATING CONFIDENTIALITY RULES; REQUIRING THE CHAIR OF THE OKLAHOMA POLLUTION PREVENTION BOARD TO PREPARE CERTAIN REPORT DETAILING POLLUTION PREVENTION INFORMATION TO THE GOVERNOR AND THE LEGISLATURE BY CERTAIN DATE; REQUIRING PUBLIC COMMENT PERIOD BEFORE SUBMISSION OF REPORT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; 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 1-2050.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Industrial Pollution Prevention and Safe Materials Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2050.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Board" means the Oklahoma Pollution Prevention Board;
2. "Business" means a person that carries on a business or commercial operation in the State of Oklahoma;
3. "Business organization" means an organization whose members include businesses;
4. "Commissioner" means the Commissioner of Health;
5. "Council" means the Oklahoma Pollution Prevention Interagency Council;
6. "Department" means the State Department of Health;
7. "Director" means the director of the Oklahoma Industrial Pollution Prevention Program created in Section 3 of this act;
8. "Program" means the Oklahoma Industrial Pollution Prevention Program;
9. "Environmental pollutants" means all environmental pollutants and wastes regardless of whether or how they are regulated. No regulatory definition of a pollutant or a toxic or controlled industrial waste shall be used by the program or the council or any governmental entity implementing this act to limit its nonregulatory activities;
10. "Facility" means all buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by a

business as defined in this act, or by any business who controls, is controlled by, or is under common control with, such business;

11. "Institute" means the Safe Materials Research and Education Institute;

12. "Multimedia" refers to air, water and land environmental media into which waste is emitted, released, discharged or disposed;

13. "Person" means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental entity, or any other legal entity however organized;

14. "Toxic material" means:

- a. any chemical substance in a gaseous, liquid or solid state that meets the definition of hazardous substance in the Comprehensive Environmental Response, Compensation, and Liability Act, subsection 14, Section 9601 of Title 42 of the United States Code,
- b. any mixture of substances described in subparagraph a of this paragraph, or
- c. any element, substance, compound, or mixture designated by the statutes of the State of Oklahoma or the rules of the State Department of Health as a controlled industrial waste substance;

15. "Waste minimization" means preferred pollution control and waste management activities, other than industrial pollution prevention; and

16. "Pollution prevention" means any practice by an environmental waste generator or pollution source, including but not limited to changes in production technology, materials, processes, operations, or procedures or use of in-process, in-line, or closed loop recycling according to standard engineering practices, which reduces the environmental and health hazards associated with environmental pollutants without diluting or concentrating the

pollutant prior to release, handling, storage, transport, treatment or disposal of the pollutant. The term does not include any practice applied to an environmental pollutant after it is generated and exits in a production or commercial operation. Pollution prevention shall not in any way be inferred to promote or require:

- a. waste burning in industrial furnaces, boilers or cement kilns,
- b. transfer of an environmental pollutant from one environmental medium to another environmental medium,
- c. conversion of a potential pollutant or waste into another form for use in a production process or operation without serving any substantial productive function,
- d. off-site waste recycling, or
- e. any other method of end-of-pipe management of environmental pollutants or wastes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2050.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

There is hereby created the Oklahoma Industrial Pollution Prevention Program, within the State Department of Health. The Commissioner of Health shall employ a Director and additional employees as are deemed necessary to carry out the provisions of this act. The Director shall be required to have at least three (3) years experience in pollution prevention. The Commissioner shall make appropriate requirements for qualifications of employees hired to carry out the provisions of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2050.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Industrial Pollution Prevention Program through the director and its employees shall:

1. Implement the provisions of this act;

2. Appoint liaison advisory panels to assist the program in its functions. Individual panels shall represent different areas of interest in and potential support of pollution prevention, including but not limited to, industry, education, environmental, labor, public interest, and consumer organizations and groups, and state and local government officials associated with statewide programs for pollution prevention. Members of such advisory panels shall be reimbursed for attending official meetings according to the provisions of the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes;

3. Assist the Commissioner in identifying opportunities to promote and assist pollution prevention and obstacles to pollution prevention within existing and future departmental regulatory programs, such as by offering businesses opportunities to submit pollution prevention plans and information to justify regulatory flexibility to encourage reallocation of industrial resources to carry out further pollution prevention, and to perform pollution prevention impact analyses of regulations prior to promulgation. Upon request, the program shall assist other state agencies and government regulatory programs to devise policies and programs based on goals and principles of pollution prevention, to be achieved through multimedia reduction of environmental pollutants;

4. Develop policies and programs to reduce the use of toxic materials in commerce and to reduce the toxicity of consumer items and products;

5. Determine, in cooperation with other state agencies, the board and the council, how to reasonably promote pollution prevention by assisting government efforts to reduce waste shifting between environmental media;

6. Develop methods to measure pollution prevention progress without the use of information deemed proprietary by the Director,

but on the basis of changes in pollutant generation relative to production output for specific wastes and pollutants and for pollution prevention at all levels within a facility;

7. Approve a memorandum of understanding between the program, the council, the institute and the board which shall be jointly adopted by those bodies and submitted to the Legislature. Such memorandum of understanding shall outline each agency's responsibilities for implementing the provisions of this act and shall prescribe the guidelines for cooperation and coordination in the implementation of the responsibilities which are shared by more than one agency;

8. Establish and operate a State Information Clearinghouse for Pollution Prevention to assist pollution prevention statewide among all industries and businesses and to assist in obtaining information on the progress of pollution prevention and related environmental policies and programs. The Clearinghouse shall include a computer database containing information on management, technical and operational approaches to achieving pollution prevention. Such computer system shall be designed to accommodate business and other relevant state agencies in obtaining information specific to production technologies, materials, operations and products. The Director shall use the Clearinghouse to collect and compile information by organizations receiving grants under the provisions of this act, information available from the open technical literature and to mount active outreach and education programs to further the development and adoption of principles and techniques of pollution prevention. The Clearinghouse shall include data on the operation and effectiveness of industry pollution prevention programs and techniques. All information available through the Clearinghouse shall be available for use without charge to businesses, governmental agencies and the general public. No business shall be required to submit information of a proprietary

nature to the Clearinghouse or to any program created by this section; and

10. The Oklahoma Pollution Prevention Board shall promulgate rules to administer the provisions of this act, in accordance with the provisions of Article I, Sections 250.3 through 308.2 and Article II, Sections 309 through 323 of the Administrative Procedures Act of Title 75 of the Oklahoma Statutes.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2050.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created an Interagency Administrative Council on Pollution Prevention. The council shall consist of the following persons: The Commissioner of Health, the Director of the Oklahoma Water Resources Board, the Executive Director of the Oklahoma Department of Pollution Control, the Director of the Oklahoma Department of Wildlife Conservation, the Commissioner of Labor, the Chairperson of the Air Quality Council, the Chair of the Pollution Control Coordinating Board, the Chair of the Oklahoma Pollution Prevention Board and one employee of the State of Oklahoma appointed by the Governor. The chair of the Oklahoma Industrial Pollution Prevention Board shall act as the chair of the interagency council. The chair shall prepare minutes summarizing each meeting as required by the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes. Members of the council may be reimbursed for attending official meetings in accordance with the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes. The council is hereby authorized to employ any necessary staff if specifically authorized by the Legislature.

B. The council shall hold regular meetings on a quarterly basis in which it shall review the pollution prevention activities of the previous quarter. The council shall promote increased coordination between the program, the council and other government environmental

programs with responsibilities and duties relating to regulation of toxic materials and pollutants, the reduction of the use of toxic materials and pollution prevention. Coordination between the council and other relevant agencies, programs and departments shall, to the fullest extent possible, include:

1. Joint pollution prevention planning processes;
2. Joint pollution prevention research and studies;
3. Joint public hearings on council activities and on the activities of member agencies relating to pollution prevention;
4. Joint pollution prevention projects; and
5. Joint pollution prevention impact analysis for existing and proposed regulations.

C. The duties of the council shall be as follows:

1. To coordinate with the United States Department of Defense facilities on pollution prevention technology transfer projects;
2. To develop recommendations for reduction of the use of ozone depletors by industries;
3. To develop recommendations for addressing indoor pollution by means of reduction in the use of toxic materials in production and commerce; and
4. To develop recommendations for modifying activities that contribute to global warming.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2050.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. There is hereby established the Oklahoma Pollution Prevention Board which shall be comprised of fifteen (15) members. The following persons, or their designees, shall serve as ex officio, voting, members of the board:

1. The Commissioner of Health;
2. The Director of the Oklahoma Department of Pollution Control;

3. The Chair of the Oklahoma Pollution Control Coordinating Board;

4. The Director of the Water Resources Board;

5. The President of the Department of Agriculture; and

6. The Commissioner of Labor.

B. The remaining members shall be appointed by the Governor as follows:

1. Two members shall represent the business community, one of whom shall be a representative of small business;

2. One member shall represent a river authority;

3. One member shall represent a public or private university;

4. Two members shall represent separate statewide environmental organizations;

5. One member shall represent organized labor;

6. One member shall represent a statewide health policy and advocacy organization; and

7. One member shall represent municipal government.

C. The members appointed by the Governor shall serve four-year terms. The Governor shall devise a method to stagger the terms of the initial appointees. No appointed members of the board shall be eligible to serve more than two consecutive terms.

D. The members of the board shall elect a chair who shall act as the executive and operating officer of the board and who shall determine the time and place of meetings, preside at the meetings, hire and supervise any employees of the board, carry out the policy decisions of the board and perform all other duties and functions assigned by the board or by statute.

E. It shall be the responsibility of the Oklahoma Pollution Prevention Board to:

1. Fulfill its obligations and responsibilities to work with the Oklahoma Industrial Pollution Prevention Program as provided for in this act;

2. Provide a forum for discussion and deliberation on matters pertaining to the implementation of the provisions of this act;

3. Provide consultation and oversight of the implementation of the provisions of this act by businesses and governmental entities and officials;

4. Receive pollution-related complaints from the public and take appropriate action;

5. Serve as an independent review body to assess progress in implementing this act;

6. Make recommendations on policies and programs for multimedia pollution prevention; and

7. Periodically review state environmental programs and projects for their ability and progress in promoting multimedia pollution prevention.

F. The board shall, whenever it deems it necessary, or at the direction of the program, establish ad hoc committees to study and formulate recommendations on particular issues and problems that arise concerning the implementation of the provisions of this act.

G. The board, or the chair acting on behalf of the board, may enter into any contract necessary or proper for the exercise of its powers or the accomplishment of its purposes as stated in this act.

H. The board, or the chair acting on behalf of the board, may conduct research studies and programs, collect and analyses data, prepare reports, charts and tables, and order all necessary hearings and investigations in connection with its work and may advise and assist other governmental entities on planning matters or program administration within the scope of that entity's powers, duties and objectives.

I. Subject to appropriations by the Legislature, the board, through its chair, may employ persons and contract for services to perform research, engineering, legal or any other services necessary to carry out its functions.

J. If funds are available, the board is authorized to make grants to support and sustain pollution prevention and the reduced use of toxic materials in production and commerce. The board shall approve all grants. Grants may be awarded for any purpose the board deems appropriate.

K. The board shall provide funding for experts to provide on-site technical assistance and economic and managerial advice, including advice on how to plan for pollution prevention and preparing toxic and hazardous substance inventories to businesses in need of assistance. Provided that funding is available to offer such assistance, the board shall approve such expenditures and may require that such grantee provide matching funds.

L. Any funds or grants expended under the provisions of this section shall not be spent for capital improvements or equipment.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2050.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A pollution prevention research and education institute shall be established within a university located in the State of Oklahoma.

B. The Oklahoma Pollution Prevention Board shall select a university in which to establish the institute. Any public or private university located within the State of Oklahoma that submits an application to the board shall be considered for selection. The selection shall be based on an objective application of criteria relating to the suitability of a university as the establishing entity and site for the institute. The board shall adopt guidelines governing the application and selection process and set forth criteria to be applied in making the selection.

C. The university selected to establish and operate the institute shall submit to the board, within ninety (90) days of the final selection, a statement indicating the types of services,

programs, and priorities related to research and education on safe materials that the institute will offer. The university will operate the institute in accordance with the memorandum of understanding adopted under the provisions of this act.

D. The institute shall operate under the direction of the Oklahoma Pollution Prevention Board.

E. The institute shall establish cooperative programs with other public and private colleges and universities designed to augment the implementation of this section.

F. The institute may, with approval by the governing Board of Regents, establish fees, tuitions and other financial charges for its programs with the consent of the board.

G. The board shall set forth the functions and duties of the institute and shall adopt rules to implement the provisions of this section.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2050.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The institute shall establish and provide a training program for individuals who wish to be certified as pollution prevention auditors.

B. The program established under the provisions of this section shall be designed to train auditors to:

1. Assist businesses and business organizations in the development and implementation of the most up-to-date pollution prevention techniques; and

2. Prepare, review and approve pollution prevention plans required under the provisions of this act.

C. The institute, with approval by the board, shall set guidelines establishing the training program and outlining all other functions and duties of the institute and its employees. The board shall adopt rules to assist in implementing such guidelines.

D. Before November 1 of each year, the institute shall prepare and submit to the board, the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives a report of the institute's operations and activities, including the status, funding and results of all projects. This report shall further include any recommendations for needed legislation and identify any state and federal economic and financial incentives which can best accelerate and maximize the research, development, demonstration and support of pollution prevention techniques and methods and it shall include a proposed work plan for the following year.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2050.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. By January 1, 1994, each business as defined in this act which manufactures, processes or otherwise uses a toxic material as those terms are defined in the Superfund Amendments and Reauthorization Act of 1986 shall complete a facility-wide Industrial Toxics Use Reduction Plan as provided in this section. The Director of the Industrial Pollution Prevention Program and the Oklahoma Pollution Prevention Board shall specify criteria for acceptable plans which shall include at a minimum the following:

1. An identification of the types and quantities of the toxic or hazardous materials that enter or exit each production process, operation, storage area, product and pollution control system at the facility which shall be presented in the form of a comprehensive mass-balance calculation;

2. An assessment of the applicability of each of the multimedia pollution prevention approaches set forth in this act for each production process or operation in which a toxic or hazardous material is used;

3. An assessment of the technical and economic feasibility of each such pollution prevention or pollution prevention technique and standard operating procedure;

4. A recommendation that the business adopt each such technique and standard operating procedure that is assessed as being feasible; and

5. A timeframe for implementing such recommendations and a financial statement that describes savings and avoided costs based upon avoided expenditures for waste management, pollution control, overhead, materials and regulatory compliance.

B. In developing an Industrial Toxic Use Reduction Plan under the provisions of this section, a facility must at least review the feasibility of each of the following pollution prevention approaches for each production technology, procedure, technique or operation discussed in the plan:

1. Input change;
2. Product reformulation;
3. Production process change;
4. Operational improvement; and
5. In-process recycling.

C. A plan may not:

1. Involve the use of pollution control approaches that address waste after it has been created; or

2. Address toxic material hazards by mitigation measures other than by pollution prevention or reduced use of toxic materials.

D. In-process recycling as a means of pollution prevention must be a closed and integral part of the production process or operation.

E. An Industrial Toxic Use Reduction Plan must be reviewed and certified as meeting the program's and the board's criteria for acceptable plans by a pollution prevention auditor who has satisfactorily completed the training program established by the

Safe Materials Research and Education Institute created under the provisions of this act.

F. Businesses shall keep plans for a facility on the premises of that facility and shall make them available to any governmental entity or the public upon request.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2050.10 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Each business required to report information pursuant to Title III, Section 313 of the Superfund Amendments and Reauthorization Act of 1986, shall provide to the Oklahoma Industrial Pollution Prevention Program for each of its facilities an annual mass-balance inventory, expressed in terms of the absolute mass of each toxic constituent manufactured, processed, or otherwise used. Such inventory shall be submitted to the program on or before July 1, 1993, and annually thereafter on or before July 1. Such inventory shall contain data reflecting toxic and hazardous substances manufactured, processed, and otherwise used, and toxic and hazardous wastes and substances reduced during the preceding calendar year.

B. The program shall adopt rules regarding the specific requirements of the inventory. The Director shall ensure the inventory requirements are completed and fulfilled on an annual basis and shall establish procedures for electronic reporting and recording of the inventory data.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2050.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Pollution Prevention Board shall promulgate rules which will assure any business required to submit information under the provisions of this act that any proprietary information or trade secrets will be strictly protected. Recipients of confidential

information shall maintain the confidentiality of such information and shall not disclose it to any person not authorized to receive such information. Any person found in violation of rules governing trade secrets or proprietary information shall be guilty of a misdemeanor and imprisoned for not more than six (6) months in the county jail or fined not more than One Thousand Dollars (\$1,000.00) for each violation. Provided, however, data or information classified as a trade secret may be compiled and made public by the program in its databases, analyses, or summaries which do not identify the subject of the data.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2050.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The chair of the Oklahoma Pollution Prevention Board shall prepare and submit to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives a report detailing the pollution prevention information gathered pursuant to the provisions of this act, including a description of the operations and activities of the programs under this act and any recommendations for legislation. The first report shall be due January 1, 1994, and subsequent reports shall be submitted by January 1 of each even-numbered year thereafter. The board shall approve the content of the report.

B. Before submission of the final report to the Governor and the Legislature, a draft of the report shall be available for at least forty-five (45) days for public comment and comment by the liaison advisory groups established under the provisions of this act. The final report shall respond to public comments submitted during the comment period.

SECTION 13. This act shall become effective July 1, 1992.

SECTION 14. 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.

43-2-1799

MJM