

1 **SENATE FLOOR VERSION**

2 April 18, 2024

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 2305

By: Pfeiffer and Alonso-
Sandoval of the House

6 and

7 Rader of the Senate

8
9 [environment and natural resources - Oklahoma PFAS
10 Act - terms - rule promulgation - Department of
11 Environmental Quality - fee schedule - liability -
12 exceptions - application and authorization -
13 codification -
14 emergency]

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

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 2-7-501 of Title 27A, unless
18 there is created a duplication in numbering, reads as follows:

19 This act shall be known and may be cited as the "Oklahoma PFAS
20 Act".

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 2-7-502 of Title 27A, unless
23 there is created a duplication in numbering, reads as follows:

24 As used in the Oklahoma PFAS Act:

1. "PFAS" means perfluoroalkyl and polyfluoroalkyl substances;

1 2. "AFFF" means aqueous film-forming foam containing
2 intentionally added PFAS; and

3 3. "AFFF waste" means AFFF, diluted AFFF, and water or soil
4 contaminated with AFFF, containing intentionally added PFAS with a
5 concentration greater than one part per billion, which is abandoned,
6 discarded, disposed, destroyed, or stored pending disposal or
7 destruction.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 2-7-503 of Title 27A, unless
10 there is created a duplication in numbering, reads as follows:

11 A. Subject to subsection B of this section, the following
12 protected passive receivers of PFAS that provide essential services
13 shall not be liable to this state for costs arising from a release
14 of PFAS to the environment:

15 1. A public water system, as defined in Section 1401 of the
16 federal Safe Drinking Water Act, 42 U.S.C., Section 300f;

17 2. A publicly or privately owned or operated treatment works,
18 as defined in Section 212 of the Federal Water Pollution Control
19 Act, 33 U.S.C., Section 1292, or the owner of a site where biosolids
20 generated from a treatment works or a permitted municipal wastewater
21 lagoon, as defined by the administrative rules of the Department of
22 Environmental Quality, are applied;

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1 3. A municipality to which a permit under Section 402 of the
2 Federal Water Pollution Control Act, 33 U.S.C., Section 1342, is
3 issued for stormwater discharges;

4 4. A political subdivision of this state acting as a wholesale
5 water agency;

6 5. A contractor performing the management or disposal
7 activities described in subsection B of this section for an entity
8 described in paragraphs 1 through 4 of this subsection;

9 6. An entity with a fire suppression system installed or
10 otherwise in use, in accordance with applicable federal, state, and
11 local fire codes, that uses AFFF containing PFAS;

12 7. A sponsor of the civilian portion of a joint-use airport or
13 a shared-use airport with the release of PFAS resulting from the use
14 of AFFF pursuant to, and carried out in accordance with, Federal
15 Aviation Administration standards and guidance on the use of the
16 substances; and

17 8. An owner or operator of a solid waste management facility,
18 as defined in Section 1004 of the Solid Waste Disposal Act, 42
19 U.S.C., Section 6903, to the extent that the facility received
20 routine municipal solid waste.

21 B. The exemption from liability contained in subsection A of
22 this section shall only apply if the protected passive receiver of
23 PFAS manages, transports, conveys, treats, disposes of, or arranges
24 for the transport, treatment, or disposal of PFAS, in accordance

1 with all relevant and applicable federal, state, or other legal
2 requirements and the most recently approved engineering standards,
3 at the time that the activity is carried out.

4 C. Nothing in this section precludes liability for damages or
5 costs associated with the release of PFAS by a protected passive
6 receiver of PFAS if the protected passive receiver acted with gross
7 negligence or willful misconduct in the discharge, disposal,
8 management, conveyance, or storage of PFAS.

9 SECTION 4. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 2-7-504 of Title 27A, unless
11 there is created a duplication in numbering, reads as follows:

12 A. The Environmental Quality Board shall promulgate rules
13 related to the receipt, storage, treatment, and disposal of PFAS in
14 this state, including rules related to a waste exclusion plan.

15 B. Rules promulgated under subsection A of this section shall
16 include provisions requiring that any person accepting AFFF waste
17 for storage, treatment, or disposal shall prove to the Department of
18 Environmental Quality that the manner in which the AFFF waste is to
19 be stored, treated, or disposed of is protective of human health and
20 the environment. The Department shall establish criteria and
21 guidelines to assist in making a determination regarding this
22 protection.

23 C. The Environmental Quality Board shall establish a schedule
24 of fees, pursuant to Section 2-3-402 of Title 27A of the Oklahoma

1 Statutes and the Administrative Procedures Act, for the application
2 to dispose, and for disposal of, AFFF waste at a facility in
3 Oklahoma. Provided, any fees established pursuant to this
4 subsection shall be in lieu of any tonnage fees assessed to the
5 holder of a permit by the Department for solid or hazardous waste
6 disposal. The fees shall be deposited into the Department of
7 Environmental Quality Revolving Fund.

8 SECTION 5. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 2-7-505 of Title 27A, unless
10 there is created a duplication in numbering, reads as follows:

11 A. A person shall submit an application to the Department of
12 Environmental Quality and shall receive authorization from the
13 Department prior to receiving, storing, treating, or disposing of
14 more than two hundred (200) pounds of AFFF waste per day. The
15 process and requirements necessary for the authorization shall be
16 governed by the rules promulgated pursuant to Section 4 of this act.
17 The Department, in the exercise of its reasonable discretion, may
18 waive specific requirements of this act or rules where there is no
19 feasible alternative to the storage, treatment, or disposal at issue
20 and the action does not result in a greater risk to human health and
21 the environment. Prior to the promulgation of rules in Section 4 of
22 this act, the Department may authorize the continuation of
23 activities covered under this subsection if it determines that the
24 activities will be conducted in a manner that is sufficiently

1 protective of human health and the environment as determined by the
2 Department.

3 B. Nothing in this section shall relieve the manufacturer of
4 PFAS-containing material from liability related to the storage,
5 treatment, or disposal of PFAS waste.

6 C. AFFF waste generated in or transported from another state
7 shall maintain the same classification or characterization it would
8 receive in the state of origin, unless such classification or
9 characterization is less protective of human health and the
10 environment than the classification or characterization it would
11 have received if generated in this state. If the AFFF waste
12 generated in or transported from another state is banned from
13 disposal in the state of origin, then the waste is similarly banned
14 from disposal in Oklahoma.

15 SECTION 6. It being immediately necessary for the preservation
16 of the public peace, health or safety, an emergency is hereby
17 declared to exist, by reason whereof this act shall take effect and
18 be in full force from and after its passage and approval.

19 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
20 April 18, 2024 - DO PASS AS AMENDED BY CS

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