

ENROLLED SENATE
BILL NO. 32

BY: GILES of the SENATE

and

MITCHELL and WIDENER of the
HOUSE

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY;
AMENDING SECTION 6 OF ENROLLED SENATE BILL NO. 28
OF THE 1ST SESSION OF THE 43RD OKLAHOMA
LEGISLATURE, 63 O.S. 1981, SECTIONS 1-2014, AS
LAST AMENDED BY SECTION 2, CHAPTER 42, O.S.L.
1988, SECTION 4, CHAPTER 225, O.S.L. 1990, AS
AMENDED BY SECTION 7, CHAPTER 217, O.S.L. 1990,
2258, AS LAST AMENDED BY SECTION 5, CHAPTER 225,
O.S.L. 1990, AND AS RENUMBERED BY SECTION 11,
CHAPTER 225, O.S.L. 1990, SECTION 7, CHAPTER 296,
O.S.L. 1990, SECTION 1, CHAPTER 156, O.S.L. 1983,
AS AMENDED BY SECTION 6, CHAPTER 225, O.S.L.
1990, AND AS RENUMBERED BY SECTION 11, CHAPTER
225, O.S.L. 1990, SECTION 2, CHAPTER 156, O.S.L.
1983, AS LAST AMENDED BY SECTION 7, CHAPTER 225,
O.S.L. 1990, AND AS RENUMBERED BY SECTION 11,
CHAPTER 225, O.S.L. 1990 AND SECTION 2, CHAPTER
122, O.S.L. 1990 (63 O.S. SUPP. 1990, SECTIONS 1-
2014, 1-2304, 1-2414, 1-2414.1, 1-2415, 1-2416
AND 2258.4), WHICH RELATE TO THE OKLAHOMA
CONTROLLED INDUSTRIAL WASTE MANAGEMENT ACT AND
THE OKLAHOMA SOLID WASTE MANAGEMENT ACT; STATING
PURPOSES FOR CERTAIN TRUST FUND; AUTHORIZING
AUTHORITY TO ACQUIRE ASSETS, DEVELOP PROPERTY AND
CONTRACT WITH CERTAIN ENTITIES TO PROMOTE
ECONOMIC DEVELOPMENT; STATING FUND SHALL CONSIST
OF CERTAIN MONIES; REQUIRING TRUST TO BE GOVERNED
BY STATUTES; REMOVING REQUIREMENT FOR BOARD TO
MEET BY CERTAIN DATE; PROHIBITING CERTAIN
CONTROLLED INDUSTRIAL WASTE FACILITIES FROM BEING
SITED IN OR OVER GROUNDWATER RESOURCE AREAS;
REQUIRING BOND OR CERTAIN FINANCIAL ASSURANCES
FOR RESPONSE, CONTAINMENT AND REMEDIATION IN
CERTAIN EMERGENCIES; PROHIBITING STATE BOARD OF
HEALTH FROM ENCOURAGING IMPORTATION OF BIOMEDICAL
WASTE GENERATED OUTSIDE THE STATE OF OKLAHOMA;
DELETING CERTAIN EXEMPTION FOR ASHES GENERATED BY
COAL FIRED FACILITIES; STATING REQUIREMENTS FOR
CERTAIN DISPOSAL SITES; DELETING REFERENCE TO
REASONABLE TIME FOR COMPLIANCE; STATING
REQUIREMENTS FOR POSTING SECURITIES FOR FINAL
CLOSURE OF SOLID WASTE DISPOSAL SITES;
AUTHORIZING DEPARTMENT TO INCREASE SECURITIES
POSTED IN CERTAIN INSTANCES; MODIFYING TIME
PERIOD FOR CERTAIN PUBLIC MEETINGS; REQUIRING
CERTAIN CLOSURE PLANS IN APPLICATIONS FOR LAND
DISPOSAL SITE PERMITS; MODIFYING CERTAIN

REQUIREMENTS FOR LANDFILLS ACCEPTING UNSPECIFIED
INDUSTRIAL SOLID WASTE; PROVIDING FOR
RECODIFICATION; PROVIDING AN EFFECTIVE DATE; AND
DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY Section 6 of Enrolled Senate Bill No. 28 of the 1st Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 6. A. The county commissioners of the counties which are within a ten-mile radius of a controlled industrial waste facility which is subject to the provisions of Section 1-2005.3A of Title 63 of the Oklahoma Statutes may establish ~~one~~ a Special Economic Development Trust Fund for that area.

B. The trust fund shall be used to market advantages of industrial development and to promote industrial development within the trust area. Such uses shall allow the authority to acquire assets, develop property, and to contract with local municipalities or economic development trusts or authorities to promote economic development in the area.

C. The trust fund shall consist of:

1. All monies received pursuant to Section 1-2005.3A of Title 63 of the Oklahoma Statutes;

2. All income from the investment of monies held in the trust fund;

3. Interest resulting from the deposit of such monies; and

4. Any other sums designated for deposit to the fund from any source, public or private.

D. Any trust established pursuant to the provisions of this section shall be governed by the provisions of Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes.

E. 1. Such Trust shall be governed by a Board of Trustees of not less than six (6) nor more than ten (10) members. Each county within the Trust area shall be represented equally on the Board of Trustees.

~~C.~~ 2. Each Trustee shall be appointed by a majority vote of the county commissioners of the county that the Trustee represents. A Trustee may be removed prior to the expiration of the term of office by a majority vote of the county commissioners of the county that the Trustee represents. In the event there are two or more Trustees from each county, the initial appointments shall be made so that the terms are staggered. After the initial appointment, each Trustee shall serve a term of two (2) years and may be reappointed.

~~D.~~ 3. The Trustees shall receive no compensation for service on the Board of Trustees, but may be reimbursed for actual and necessary expenses incurred in the performance of their duties as a Trustee in accordance with the State Travel Reimbursement Act.

~~E.~~ 4. Any action of the Board of Trustees must be approved by a two-thirds (2/3) vote of the total authorized membership of the Board.

~~F.~~ Each Board of Trustees established pursuant to the provisions of this section shall meet on or before November 1, 1991, and adopt rules for the operation of the Trust.

5. The Trustees shall have authority to exercise such powers as are necessary to perform the duties and functions imposed by the provisions of this section.

~~G. F. Thereafter, the~~ The Board of Trustees shall meet not less than twice each calendar year. At the first meeting in a new calendar year the members shall elect a chairman, a vice chairman, a secretary, and a treasurer.

~~H. All funds allocated to the trusts established pursuant to the provisions of this section shall be used to market the advantages of industrial development and to promote industrial development within the Trust area. Such uses shall include the authority to acquire assets, develop property, provide financing for industrial development and to contract with local municipalities or economic development trusts or authorities to promote economic development in the area.~~

SECTION 2. AMENDATORY 63 O.S. 1981, Section 1-2014, as last amended by Section 2, Chapter 42, O.S.L. 1988 (63 O.S. Supp. 1990, Section 1-2014), is amended to read as follows:

Section 1-2014. A. The practice of plowing controlled industrial waste into the soil surface for the purpose of disposal is hereby prohibited except pursuant to a plan approved by the Department for biodegradable or inert material. In addition, the site used for such disposal shall not be subject to flooding or extensive erosion. The hearing provisions of Section 1-2006 of this title shall not apply to soil farming operations conducted on the generator's plant site or nearby property under the control of the generator.

B. A controlled industrial waste facility for on-site treatment, or storage ~~or disposal~~ shall not be sited in or over a principal groundwater resource or recharge area as ~~defined~~ determined in writing by the Oklahoma Geological Survey, except pursuant to a plan approved by the Department. The plan shall contain such design criteria and groundwater monitoring provisions as deemed necessary by the Department to protect the quality of said principal groundwater resource or recharge area. The plan shall also provide for the establishment and maintenance of a bond or other financial assurance in a form and amount acceptable to the Department, specifically for the purpose of assuring both immediate response and containment and comprehensive remediation as directed by the Department in the event of a release to soil or water of any controlled industrial waste or controlled industrial waste constituent.

C. A 1. Except as provided in paragraph 3 of this subsection, a controlled industrial waste facility for off-site treatment, or storage or for on-site or off-site disposal shall not be sited in or over a principal groundwater resource or recharge area as defined determined in writing by the Oklahoma Geological Survey.

2. A controlled industrial waste facility for off-site treatment, storage or disposal shall not be sited in any other area of the state without the prior written approval of a plan by the affected property owners as such term is defined in Section 1-2006 of this title. Such plan shall provide for the minimization of hazards to the health and property of such affected property owners from emergency situations or from sudden or nonsudden releases of controlled industrial waste or constituents thereof.

If, after the applicant has made a reasonable effort to negotiate said plan with the affected property owners and has acquired the written approval of a majority of the affected property owners, the applicant may certify to the State Department of Health that such reasonable effort had been made and that a minority of the affected property owners would not consent. The State Department of Health may then issue said permit if it meets all other requirements.

The Department is expressly authorized to review the reasons of the affected property owners for nonapproval of the plan. If nonapproval is not based solely upon minimization of environmental hazards to the health and property of the affected property owners, the Department shall exclude those affected property owners from a calculation of a majority of affected property owners. The Department shall have the final authority to issue or not to issue any permit to any treatment, storage, or disposal facility.

3. The Department may grant a variance to an off-site controlled industrial waste treatment or storage facility to allow the siting of such facility over a principal groundwater resource or recharge area as determined in paragraph 1 of this subsection, upon the following conditions:

- a. the request for variance, and a detailed rationale, shall be included in the permit application,
- b. the Department shall receive and consider comments on the appropriateness of the proposed variance at any meeting or hearing conducted pursuant to the provisions of Section 1-2006 of this title,
- c. the applicant shall bear the burden of establishing clearly and convincingly to the Department that the design, construction and operation of the proposed facility will be such that the risk of a release of controlled industrial waste or controlled industrial waste constituents directly or indirectly to groundwater is minimal, and
- d. the permit application shall provide for the establishment and maintenance of a bond or other financial assurance as described and for the purposes specified in subsection B of this section.

D. The provisions of this section shall apply to:

1. Applications for future proposed sites;
2. Pending applications for construction permits; and
3. Applications for construction permits to modify existing storage or treatment facilities which have either a permit or interim status.

E. The provisions of ~~subsections~~ paragraphs 1 and 2 of subsection C and D of this section shall not apply to applications to increase existing storage, treatment or disposal capacity or to modify existing disposal sites for treatment or disposal. Such modification of existing disposal sites shall include upgrading said facilities to use the best available waste destruction technology such as incineration, detoxification, recycling or neutralization technology.

SECTION 3. AMENDATORY Section 4, Chapter 225, O.S.L. 1990, as amended by Section 7, Chapter 217, O.S.L. 1990 (63 O.S. Supp. 1990, Section 1-2304), is amended to read as follows:

Section 1-2304. A. In order to protect public health and preserve the expectation of future disposal capability of areas local to a disposal site, except as otherwise provided by this section, no disposal site shall accept more than two hundred (200) tons per day of solid waste generated more than fifty (50) miles from the disposal site unless a permit application for a new disposal site is submitted and approved by the Department for such waste.

The waste generated within the fifty-mile local area shall not be considered in calculating the two hundred-ton limit.

~~Fly ash and bottom ash generated by coal-fired facilities shall be subject to neither the two hundred-ton nor the fifty-mile limit.~~

B. New and existing landfills, incinerators, or other sites designed, constructed and operated in accordance with the most environmentally protective solid waste regulations adopted by the Board shall be subject to neither the two hundred-ton nor the fifty-mile limit. ~~For landfills, the most environmentally protective solid waste regulations shall be any of those regulations adopted for the largest population category and which include leachate collection in the landfill design.~~

C. The Department may grant a temporary waiver to the limit specified in this section in the event of an emergency. Any such waiver so granted may be conditioned on development of additional capacity in the area where the waste is generated.

D. Before any disposal site accepts for disposal any solid waste generated outside the territorial limits of this state in excess of two hundred (200) tons per day it shall:

1. Submit a disposal plan to the Department for approval prepared by either the generator or shipper as set out in the regulations established by the Board. Such plans as a minimum shall indicate the type and amount of solid waste generated, the handling, storage, treatment, disposal method and the disposal site to be used. The disposal plans shall be kept current by the persons submitting the original disposal plans and the Department shall be advised not less than five (5) working days prior to the day on which such changes are to be implemented.

Persons storing or shipping recyclable materials in an environmentally acceptable manner for the purpose of recycling shall be required to file disposal plans required by this subsection only for those wastes which are to be disposed.

2. ~~Operate~~ Be designed, constructed and operated in accordance with the most environmentally protective solid waste regulations adopted by the Board. For landfills, the most environmentally protective solid waste regulations shall be any of those regulations adopted for the largest population category and which include leachate collection in the landfill design, and which were effective when the application for disposal plan approval was filed with the Department.

E. Operators of solid waste disposal sites shall reject shipments of solid waste brought into this state which do not meet all the applicable requirements of this section. All rejected solid waste shall be taken out of state by the same persons who brought it into this state in violation of the provisions of this section.

F. Fly ash and bottom ash generated by coal-fired facilities located outside the territorial limits of this state in excess of two hundred (200) tons per day shall be constructively reutilized or disposed of only in an active or inactive mining operation subject to the provisions contained in Title 45 of the Oklahoma Statutes.

G. Willful violation of this section shall constitute a felony punishable by a fine of not more than Ten Thousand Dollars (\$10,000.00) or imprisonment of not more than five (5) years, or both such fine and imprisonment.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2304.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

Absent specific Legislative authority, the State Board of Health shall not amend any existing rule in such a manner as to encourage importation of biomedical waste generated outside the territorial limits of this state.

SECTION 5. AMENDATORY 63 O.S. 1981, Section 2258, as last amended by Section 5, Chapter 225, O.S.L. 1990, and as

renumbered by Section 11, Chapter 225, O.S.L. 1990 (63 O.S. Supp. 1990, Section 1-2414), is amended to read as follows:

Section 1-2414. A. ~~After adoption of the rules and regulations as provided in Section 2259 of this title and a reasonable time fixed by the Board of Health for compliance therewith, no~~ No person shall dispose of solid waste at any site or facility other than a site or facility for which a permit for solid or controlled industrial waste disposal has been issued by the Department, except as specified in subsection C of this section. No provision of this act shall be construed so as to prevent a person from disposing of solid waste from his own household upon his own land provided such disposal does not create a nuisance or a hazard to the public health or does not violate a city ordinance. Except as otherwise provided in subsection F of this section, the Department shall not issue an original permit for a new landfill disposal site having a permitted boundary located within one-half (1/2) mile of an outside wall of any dwelling occupied at the time a permit application is made unless the owner of the dwelling consents to the location of the landfill disposal site, except under the procedures specified in subsection B of this section. Said consent shall not be required for any landfill disposal site designed for the disposal of fly ash or bottom ash generated by coal-fired facilities. Said consent shall not be required as a condition for the issuance of:

1. any renewal permit for an existing landfill site; or
2. a permit for any modification or expansion of an existing landfill site, or for;
3. a permit for the construction of a new landfill site on property if any point of said property is within three (3) miles of any point of an existing permitted landfill site owned by the permittee.

B. If, after the applicant has made a reasonable effort to negotiate a consent agreement with the owners of such dwellings and has failed to obtain such consent, the applicant may certify to the Department that such reasonable effort had been made and that the owners of said dwellings will not consent. The Department may then issue said permit if the permit application meets all other requirements of the solid waste regulations of the Board.

If a permit is issued without the consent of said owners, they shall have a cause of action against the applicant for any loss of value to their land and residence which will be caused by the operation of the landfill disposal site. Further, in an action brought to determine said damage, the court shall have the authority to weigh the public benefit of the proposed disposal site against the negative impact to the dwellings in the affected area and enjoin the operation of said landfill disposal site where the negative impact outweighs the public benefit. Any nonconsenting owner or owners who wish to file with the court must do so no later than sixty (60) days after issuance of the permit. Upon issuance of any such permit the Department shall file a recordable notice of the permit in the land records of the county in which the site is located. The notice shall contain the legal description of the site as well as the terms under which the permit is issued.

C. No permit shall be required for beneficial use of municipal wastewater sludge in land application, but all sludge application projects shall be operated in conformance with site standards and operational regulations adopted by the Board.

D. The Department shall issue a permit to be effective for the life of a given site.

E. Information and data submitted in support of a permit application or a permit modification application for any site

serving a population equivalent of five thousand (5,000) or more persons shall be prepared and sealed by a professional engineer licensed to practice in this state. Applicants for smaller site permits are encouraged but not required to seek professional engineering assistance.

F. The State Department of Health shall not issue any permit for the siting or expansion of an asbestos monofill which will be located closer than five hundred (500) yards from any occupied residence. No asbestos monofill shall be constructed within three (3) miles of the corporate boundaries of any city or town.

SECTION 6. AMENDATORY Section 7, Chapter 296, O.S.L. 1990 (63 O.S. Supp. 1990, Section 1-2414.1), is amended to read as follows:

Section 1-2414.1 A. In considering applications for solid waste disposal site permits which were originally filed with the State Department of Health prior to April 30, 1990, the Department shall require applicants to submit information based on an individual on-site observation for determining the highest seasonal phreatic groundwater table. The original notice and opportunity to request a public meeting regarding such applications shall be deemed to comply with the Solid Waste Management Act for any submittals by the same applicant for the same site.

B. For all land disposal site permits, the Department shall require ~~the submission of plans for phased~~ posting of security for proper final closure, maintenance, and monitoring of solid waste disposal sites. The Department shall ~~only~~ require posting of an amount sufficient to cover the estimated final closure costs for the projected operation of a site ~~during any one (1) year of its life,~~ plus the eight-year post-closure maintenance and monitoring period. ~~At no time during the life of a site shall any portion of the site which has not achieved final closure be larger than the portion utilized during the previous one (1) year~~ A site may be closed in phases according to a closure plan approved by the Department. Any site which deviates from the approved closure plan, or when the cost of closure is found to have increased, must post any increase in security. The term "final closure" shall mean those measures for providing final capping material, proper drainage, perennial vegetative cover, maintenance, and monitoring required for the site by regulations of the State Board of Health.

SECTION 7. AMENDATORY Section 1, Chapter 156, O.S.L. 1983, as amended by Section 6, Chapter 225, O.S.L. 1990, and as renumbered by Section 11, Chapter 225, O.S.L. 1990 (63 O.S. Supp. 1990, Section 1-2415), is amended to read as follows:

Section 1-2415. A. An applicant for a permit for a new disposal site, upon the filing of the application with the Department, shall give notice of the opportunity for the public to request a public meeting to present views concerning the permit application. Notice shall be given by:

1. one publication in two (2) newspapers local to the proposed disposal site; and
2. certified mail, return receipt requested, to any person who holds surface title to any real property on the date of application within one-half (1/2) mile of the permitted boundary of the proposed disposal site.

If within thirty (30) calendar days of the publication of such notice the Department receives from any person residing or doing business in Oklahoma a written request for such meeting, it shall hold the same no sooner than forty-five (45) days from the date of publication but not later than ninety (90) days after the expiration of the thirty-calendar-day period, and allow opportunity for

presentation of written and oral views. The applicant or a representative of the applicant shall be present at the meeting to respond to questions. Such meetings may be held in the offices of the Oklahoma State Department of Health or at a location convenient to the proposed disposal site if requested in the written request for such meeting. The Department shall structure such meeting to afford the greatest opportunity for citizen input. Such meeting shall not be a quasi-judicial proceeding.

B. Beginning September 1, 1990, and within thirty (30) days of the date the public meeting is held or within ninety (90) days of the publication of the notice of application if no public meeting is requested, any person who is a resident or owner of a business or land in the county of the proposed disposal site, or of an adjacent county, who may suffer environmental damage as a result of the construction and operation of the site, shall have the right to request and participate in a hearing as a party to an individual administrative proceeding on the permit. The permit applicant shall also be a party. Parties shall have the right to present evidence to show the Department, and the Department in making its decision will decide, whether the application meets the requirements of the Solid Waste Management Act and the regulations of the State Board of Health. The proceeding shall be conducted pursuant to the provisions of the Administrative Procedures Act.

C. The provisions of this section shall not affect any pending applications and any pending litigation related to the procedures by which the Department has issued permits before September 1, 1990.

SECTION 8. AMENDATORY Section 2, Chapter 156, O.S.L. 1983, as last amended by Section 7, Chapter 225, O.S.L. 1990, and as renumbered by Section 11, Chapter 225, O.S.L. 1990 (63 O.S. Supp. 1990, Section 1-2416), is amended to read as follows:

Section 1-2416. A. Applications for land disposal site permits shall contain a ~~phased~~ closure plan which includes cost estimates and plans and specifications for final grading, final cover, proper drainage, groundwater monitoring where applicable, and revegetation, and the maintenance of such works for eight (8) years or such time period as may be mandated pursuant to the federal Solid Waste Disposal Act after site closure. Applications for other types of disposal site permits shall have a closure plan which would accomplish the removal and proper disposal of any remaining waste and the elimination of potential environmental health hazards.

B. 1. Applicants other than units of government shall post a bond, insurance, trust fund, or irrevocable letter of credit guaranteeing the performance of such closure plan. The state shall be the sole beneficiary of any such security. In lieu of such security the applicant may deposit cash or certificates of deposit with the State Treasurer payable to the Public Health Special Fund and the state shall have a security interest therein for the cost of performance of closure.

2. Applicants which are units of government which own or operate an improperly closed disposal site shall post such a bond, or cash, or certificates of deposit with the State Treasurer payable to the Public Health Special Fund for performance of site closure for their existing site and for the new site.

C. When a bond or other security is required, it shall remain in effect until performance of the closure plan is completed. The amount of such security shall be set by the Department and shall not be less than the anticipated cost of contracting for performance of each phase of the closure plan. After closure begins, the Department may from time to time allow a reduction in the amount of security to reflect the anticipated costs which remain.

D. All existing active or improperly closed disposal sites except transfer stations shall comply with the provisions of this section within one (1) year after the effective date of this act.

SECTION 9. AMENDATORY Section 2, Chapter 122, O.S.L. 1990 (63 O.S. Supp. 1990, Section 2258.4), is amended to read as follows:

Section 2258.4 The Department may issue a permit for a landfill disposal site ~~(, not a controlled industrial waste facility),~~ which accepts unspecified industrial solid waste, only under the following circumstances:

1. The landfill is located outside of areas of principal groundwater resource or recharge areas as determined and mapped by the Oklahoma Geological Survey;~~or~~

~~2. The~~ and is on a proposed site on property, owned or operated by a person who also owns or operates a controlled industrial waste facility or solid waste facility, on or contiguous to property on which a controlled industrial waste facility or solid waste facility is operating pursuant to a permit and the site is designed to meet the most environmentally protective solid waste regulations adopted by the Board for the largest population category and includes a leachate collection system; or

2. The landfill complies with all siting and public participation requirements as though the solid waste landfill were a controlled industrial waste landfill; or

3. The site is proposed, designed, and permitted as an industrial solid waste monofill.

For purposes of this provision, the term "monofill" means a landfill which is used to dispose of a single type of specified solid waste, except for other solid wastes which are not readily separable from the specified waste. The provisions of this section shall apply to all pending applications for which final agency action has not been taken and future permit applications.

SECTION 10. RECODIFICATION Section 2, Chapter 122, O.S.L. 1990 (63 O.S. Supp. 1990, Section 2258.4), shall be recodified as Section 1-2416.1 of Title 63 of the Oklahoma Statutes.

SECTION 11. This act shall become effective July 1, 1991.

SECTION 12. 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 30th day of May, 1991.

President of the Senate

Passed the House of Representatives the 31st day of May, 1991.

Speaker of the House of Representatives

