

ENROLLED SENATE
BILL NO. 683

BY: GILES, CAPPS and MUEGGE of
the SENATE

and

LEIST, WIDENER, GRIESER,
HUDSON, SULLIVAN and VAUGHN
(George) of the HOUSE

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING
63 O.S. 1991, SECTIONS 1-2302, 1-2414, 1-2305, 1-
2414.1, 1-2416 AND 1-2417, WHICH RELATE TO THE
OKLAHOMA SOLID WASTE MANAGEMENT ACT; MODIFYING AND
ADDING TERMS; PROHIBITING CERTAIN PERSONS FROM
OWNING OR OPERATING A SOLID WASTE DISPOSAL
FACILITY; PROHIBITING TRANSPORTATION OF SOLID WASTE
TO UNPERMITTED SITES; MODIFYING CERTAIN NONPERMIT
SITE PROJECTS; MODIFYING CERTAIN FEES; MODIFYING
REQUIREMENTS FOR CLOSURE, MAINTENANCE AND
MONITORING OF LAND DISPOSAL SITES; REQUIRING
CLOSURE PLAN TO BE INCLUDED IN CERTAIN SOLID WASTE
PERMIT APPLICATIONS; AUTHORIZING THE STATE
DEPARTMENT OF HEALTH TO REQUIRE PERMITTEE OR
APPLICANTS TO POST FINANCIAL ASSURANCES TO COVER
ESTIMATED COSTS OF CLOSURE FOR SITES; EXEMPTING
CERTAIN ENTITIES FROM CERTAIN BONDING REQUIREMENTS
FOR CERTAIN TIME PERIODS; EXEMPTING CERTAIN
ENTITIES FROM CERTAIN CLOSURE REQUIREMENTS WITH
CERTAIN RESTRICTIONS; PROVIDING FOR DEPARTMENT TO
REDUCE SECURITY AFTER FINAL CLOSURE IS COMPLETE;
DELETING EXEMPTION FOR CERTAIN SITES TO COVER SOLID
WASTE WEEKLY OR MONTHLY; REQUIRING CERTAIN
DISCLOSURE STATEMENTS OR OTHER INFORMATION;
AUTHORIZING THE STATE DEPARTMENT OF HEALTH TO

REFUSE TO ISSUE, AMEND, MODIFY OR TRANSFER A SOLID WASTE PERMIT TO CERTAIN PERSONS OR AFFILIATED PERSONS; STATING REQUIREMENTS AND PROCEDURES FOR PERMITTING; AUTHORIZING THE STATE BOARD OF HEALTH TO ADOPT IMPLEMENTING RULES; MODIFYING FEE FOR SOLID WASTE GENERATED OUT OF STATE; DIRECTING THE STATE DEPARTMENT OF HEALTH TO MAKE RECIPROCAL AGREEMENTS WITH CERTAIN STATES; PROVIDING CERTAIN RESTRICTION; AUTHORIZING STATE BOARD OF HEALTH TO ADJUST FEE SCHEDULE; PROVIDING FOR CODIFICATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-2302, is amended to read as follows:

Section 1-2302. As used in the Oklahoma Solid Waste Management Act, unless the context otherwise requires:

1. "Affiliated person" means:
 - a. any officer, director or partner of the applicant,
 - b. any person employed by the applicant as general or key manager who directs the operations of the site, transfer station, or facility which is the subject of the application, and
 - c. any person owning or controlling more than five percent (5%) of the applicant's debt or equity;
2. "Board" means the State Board of Health;
3. "Disclosure statement" means a written statement by the applicant which contains:
 - a. the full name, business address, and social security number of the applicant, and all affiliated persons,
 - b. the full name and business address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%) or which is a parent company or subsidiary of the applicant, and a description of the on-going organizational relationships as they may impact operations within the state,
 - c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental regulation,
 - d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant and affiliated person which resulted in a final agency order or final judgment by a court of record, including final order or judgment on appeal, in the ten (10) years immediately preceding the filing of the application relating to solid or controlled industrial

waste. Such action shall include, without limitations, any permit denial or any sanction imposed by a state regulatory agency or the United States Environmental Protection Agency, and

e. a listing of any federal environmental agency and any state environmental agency that has or has had regulatory responsibility over the applicant;

4. "Department" means the State Department of Health;

5. "Final closure" means those measures for providing final capping material, proper drainage, perennial vegetative cover, maintenance, monitoring and other closure actions required for the site by rules of the State Board of Health;

6. "History of noncompliance" means any past operations by an applicant or affiliated persons which clearly indicate a reckless disregard for environmental regulation, or a demonstrated pattern of prohibited conduct which could reasonably be expected to result in adverse environmental impact if a permit were issued, as evidenced by findings, conclusions and rulings of any final agency order or final order or judgment of a court of record;

7. "Person" means any individual, corporation, company, firm, partnership, association, trust, state agency, government instrumentality or agency, institution, county, any incorporated city or town or municipal authority or trust in which any governmental entity is a beneficiary, venture, or other legal entity however organized;

8. "Solid waste" means all putrescible and nonputrescible refuse in solid or semisolid form including, but not limited to, garbage, rubbish, ashes or incinerator residue, street refuse, dead animals, demolition wastes, construction wastes, solid or semisolid commercial and industrial wastes including explosives, biomedical wastes, chemical wastes, herbicide and pesticide wastes. Scrap materials which are source separated for collection and processing as industrial raw materials shall not be considered solid waste for the purposes of this act, except when contained in the waste collected by or in behalf of a solid waste management system;

9. "Disposal site" means any place, including a transfer station, or any other place at which solid waste is dumped, abandoned, or accepted or disposed of by incineration, land filling, composting, shredding, compaction, baling or any other method or by processing by pyrolysis, resource recovery or any other method, technique or process designed to change the physical, chemical or biological character or composition of any solid waste so as to render such waste safe or nonhazardous, amenable to transport, recovery or storage or reduced in volume. A disposal site shall not include a manufacturing facility which processes scrap materials which have been separated for collection and processing as industrial raw materials;

10. "Solid waste management system" means the system that may be developed for the purpose of collection and disposal of solid waste by any person engaging in such process as a business or by any municipality, authority, trust, county or by any combination thereof at one or more disposal sites;

11. "Dwelling" means a permanently-constructed, habitable structure designed and constructed for full-time occupancy in all weather conditions, which is not readily mobile and shall include but not be limited to a manufactured home as such term is defined by paragraph 11 of Section 1102 of Title 47 of the Oklahoma Statutes;

12. "Integrated solid waste management plan" means a plan that provides for the integrated management of all solid waste within the planning unit and embodies sound principles of solid waste management, natural resources conservation, energy production, and employment-creating opportunities;

13. "Recycling" means to reuse a material that would otherwise be disposed of as waste, with or without reprocessing;

14. "Solid waste planning unit" means any county or any part thereof, incorporated city or town, or municipal authority or trust in which any governmental entity is a beneficiary, venture, or other legal entity however organized, which the State Department of Health determines to be capable of planning and implementing an integrated solid waste management program;

15. "Waste reduction" means to reduce the volume of waste requiring disposal; and

16. "Transfer station" means any disposal site, processing facility or other place where solid waste is transferred from a vehicle or container to another vehicle or container for transportation, including but not limited to a barge or railroad unloading facility where solid waste, in bulk or in containers, is unloaded, stored, processed or transported for any purpose. The term does not include the following:

- a. a facility, such as an apartment complex or a large manufacturing plant, where the solid waste that is transferred has been generated by the occupants, residents, or functions of the facility,
- b. a citizens' collection station, or
- c. a waste collection system which leaves collected solid waste in enclosed containers along the collection route for later transport to a recycling or disposal facility serving the area.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-2414, is amended to read as follows:

Section 1-2414. A. Except as specified in subsection C of this section:

1. 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;

2. No person shall own or operate a site or facility at which solid waste is disposed other than a site or facility for which a permit for solid or controlled industrial waste disposal has been issued by the Department; and

3. No person shall knowingly transport solid waste to an unpermitted site or facility.

B. 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.

C. Except as otherwise provided in subsection H 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 D 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

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.

D. 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.

E. No permit shall be required for beneficial use by land application of municipal wastewater sludge from facilities in substantial compliance with a water or sewage permit issued by the Commissioner of Health, but all sludge application projects shall be operated in conformance with site standards and operational regulations adopted by the Board.

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

G. 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.

H. 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 3. AMENDATORY 63 O.S. 1991, Section 1-2305, is amended to read as follows:

Section 1-2305. A. 1. On and after September 1, 1990, there is imposed a one-dollar-and-fifty-cent-per-ton fee for waste disposed of at disposal sites or facilities, or at commercial biomedical waste processing facilities, or five-dollars-per-ton at sludge land application sites within Oklahoma when the waste is generated from outside of Oklahoma, in accordance with Section 8 of this act, whichever is higher.

2. The fee assessed by this subsection is to be a charge to waste producers in addition to any charges specified in any contract or elsewhere. The fee shall be imposed upon and passed through to disposers of waste using the facility.

3. The owner or operator of a solid waste disposal site shall collect the fee levied pursuant to this subsection as trustee for the state and shall prepare and file with the Department monthly returns indicating:

- a. the total tonnage of solid wastes received for disposal at the gate of the site, and
- b. the total amount of the fees collected pursuant to this section.

4. Not later than thirty (30) days after the end of the month to which such a return applies, the owner or operator shall mail to the Department the return for that month together with the fees collected during that month as indicated on the return.

5. The owner or operator may receive an extension of not more than thirty (30) days for filing the return and remitting the fees, provided that:

- a. the owner or operator has submitted a request for an extension in writing to the Department together with a detailed description of why the extension is requested,
- b. the Department has received the request not later than the day on which the return is required to be filed, and
- c. the Department has approved the request.

6. If the fees are not remitted within sixty (60) days of the last day of the month during which they were collected, the owner or operator shall pay an additional fifty percent (50%) of the amount of the fees for each month that they are late.

B. 1. There is imposed upon each customer of a solid waste service operated by or on behalf of a political subdivision or public trust of which it is beneficiary a user fee of twenty-five cents (\$.25) per month or Three Dollars (\$3.00) per year. The fee shall be in addition to any periodic charges for solid waste services. The user fee shall be included in the billing cycle, stated separately from any other periodic charges, and shall be identified as a fee for purposes of administering the Oklahoma Solid Waste Management Act, Section 1-2300 et seq. of this title. In lieu of the fee provided for in subsection A of this section, this fee shall apply to out-of-state customers of a solid waste service operated by a political subdivision or public trust within the State of Oklahoma, provided however, such exemption shall be limited to services operated in municipalities adjacent to and adjoining the boundaries of the State of Oklahoma.

2. a. The monthly fee shall be collected insofar as practicable at the same time as, and in the same manner as, the periodic charges for solid waste service or other utility services in accordance with the regular billing practice of the political subdivision or public trust. Not later than thirty (30) days after the end of the month to which such a return applies, the political subdivision or public trust shall mail to the Department the return for that month together with the fees collected during that month as indicated on the return.
- b. The fee levied on an annual basis shall be collected and remitted to the Department on or before October 31, 1990 and on or before each October 31 thereafter. The annual return shall be mailed to the Department together with the annual fees collected as indicated on the return.

3. For political subdivisions or public trusts which substantially reduce their wastestream through integrated waste management systems, the Board shall adopt rules requiring a lesser fee generally commensurate with the waste reduction impact of the program of the political subdivision. The Department shall review waste reduction and recycling programs throughout the state on an annual basis in developing a statewide fee rate structure for such programs. Such a fee shall not exceed the user fee of twenty-five cents (\$.25) per month or an annual fee of Three Dollars (\$3.00) per year levied upon each residential customer.

4. The political subdivision or public trust shall collect the fee levied pursuant to this subsection as trustee for the state and

shall prepare and file with the Department the returns indicating the total amount of the fees collected pursuant to this section.

5. Each disposal site permittee or each political subdivision or public trust of which it is beneficiary which collects the user fee for the state shall be entitled to retain ten percent (10%) of collected revenue to defray the cost of collection and bookkeeping.

C. The monies remitted to the Department pursuant to this section shall be credited to a separate account in the Public Health Special Fund.

D. The State Commissioner of Health shall expend funds from the special account in the Public Health Special Fund for the purposes of administration and enforcement of the provisions of the Oklahoma Solid Waste Management Act and for the development of technical assistance programs, public environmental education programs and educational curricula, solid waste studies, development of a statewide solid waste plan, and recycling and litter prevention programs. Any litter prevention program shall be developed by the Department in conjunction with the State Department of Transportation.

E. The provisions of this section shall not apply to landfill disposal sites that receive only ash generated by the burning of coal.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-2414.1, is amended to read as follows:

Section 1-2414.1 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 Oklahoma Solid Waste Management Act for any submittals by the same applicant for the same site.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-2416, is amended to read as follows:

Section 1-2416. A. Applications for land disposal site permits shall contain a closure plan which defines operational phases and includes cost estimates, plans and specifications for final closure and the maintenance and monitoring of such works for thirty (30) years or such post-closure time period as may be mandated pursuant to the federal Solid Waste Disposal Act. Generator owned and operated private industrial nonhazardous monofills shall only be required to have an eight-year post-closure period or such post-closure time period as may be mandated pursuant to the federal Solid Waste Disposal Act. A site may be closed in phases according to a closure plan approved by the Department.

B. Applications for other types of solid waste 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.

C. The Department shall require applicants and permittees to post financial assurances in an amount sufficient to cover the estimated cost of closure. The closure costs for landfills shall include the estimated costs of the projected phased final closure and the post-closure maintenance and monitoring. An increase in financial assurance shall be required when any permittee deviates from the approved closure plan or when the cost of closure is found to have increased.

D. 1. Applicants and permittees 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. This subsection does not apply to units of state or federal government. Other units of government shall comply with this subsection by October 9, 1993.

2. Applicants and permittees 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. This subsection does not apply to units of state or federal government.

E. 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 final closure is complete, the Department may allow a reduction in the amount of security to reflect the anticipated costs which remain.

F. All existing active or improperly closed disposal sites except transfer stations shall comply with the provisions of this section, except that sites permitted prior to August 8, 1985, shall be exempt from this section if final closure is complete by October 9, 1993, and the method of closure is conducted with approval of the Department.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-2417, is amended to read as follows:

Section 1-2417. A. The Board of Health is directed and empowered to adopt and promulgate rules for solid waste transportation and for the permitting, posting of security, construction, operation, closure, maintenance and remediation of solid waste disposal sites. Rules and regulations authorized under the provisions herein shall be promulgated and adopted in compliance with the Administrative Procedures Act. Notice of any proposed changes to such rules and regulations shall be given to the Oklahoma Municipal League, the County Commissioners Association, and such citizens as have requested to be notified and shall advise them of an opportunity to comment thereon before the adoption of such rules and regulations.

B. Rules for disposal sites shall be promulgated to allow for disposal of solid waste in ways that are environmentally safe and sanitary, as well as economically feasible. The Board may by regulation provide that the Department may authorize a variance from the specific requirements of a particular rule provided that the applicant for a variance has demonstrated that compliance with the rule will be met by substituted technology which equals or exceeds the protection accorded by the particular rule and that the variance will not result in a hazard to the health, environment and safety of the people of this state or their property. The grant of any variance shall be upon express condition that, in the event of the failure of the substituted technology to conform to the requirements of law and rules, the applicant shall be required to incorporate the technology, process or procedure established under the rules.

C. Where existing soil and groundwater conditions are such that a constructed liner may be required, the Department shall, as an aid in such consideration, calculate the potential percolation of precipitation into deposited solid waste and the potential for leachate generation using a water-balance method based on rainfall, evapotranspiration, and soils data. The applicant shall provide such site-specific data as is necessary for the Department to evaluate the validity of the water-balance calculation for the specific site.

D. Disposal sites approved by the Department to receive only solid waste shall not accept for disposal any waste classified as controlled industrial waste.

E. The Board shall not adopt rules pertaining to standards for the transportation of solid waste which are more stringent than those of the United States Department of Transportation or the United States Interstate Commerce Commission.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2306 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. Except as provided in paragraph 2 of this subsection, all applicants for the issuance, amendment, modification or transfer of any solid waste permit, license, certification or operational authority issued by the Department shall file a disclosure statement with their applications.

2. If the applicant is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934, or a wholly owned subsidiary of a publicly held company, the applicant shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the Securities and Exchange Commission, which provide information regarding legal proceedings in which the applicant has been involved. The applicant shall submit such other information as the Commissioner may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

B. The Department is authorized to revoke or to refuse to issue, amend, modify, renew or transfer a permit for the disposal of solid waste from or to any person or an affiliated person who:

1. Is not, due solely to the applicant's actions or inactions, in substantial compliance with any final agency order or final order or judgment of a court of record secured by the Department issued pursuant to the provisions of the Oklahoma Solid Waste Management Act, Section 1-2300 et seq. of Title 63 of the Oklahoma Statutes; or

2. Is not in substantial compliance with any final agency order or final order or judgment of a court of record secured by any state or federal agency, as determined by that agency, relating to the storage, transfer, transportation, treatment or disposal of any solid waste; or

3. Has evidenced a history of a reckless disregard for the protection of the public health and safety or the environment through a history of noncompliance with state or federal environmental laws, including without limitation the rules of the Department, regarding the storage, transfer, transportation, treatment or disposal of any solid or controlled industrial waste.

C. The application shall be signed under oath by the applicant.

D. The Department may suspend or revoke a permit issued pursuant to the Oklahoma Solid Waste Management Act to any person who has failed to disclose or states falsely any information required pursuant to the provisions of this section.

E. Any person who willfully fails to disclose or states falsely any such information, upon conviction, shall be guilty of a felony and may be punished by imprisonment for not more than five (5) years or a fine of not more than One Hundred Thousand Dollars (\$100,000.00) or both such fine and imprisonment.

F. Noncompliance with a final agency order or final order or judgment of a court of record which has been set aside by a court on appeal of such final order or judgment shall not be considered a final order or judgment for the purposes of this section.

G. The State Board of Health shall adopt rules, pursuant to the Administrative Procedures Act, as may be necessary and appropriate 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 1-2307 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Subject to the constraints of federal law, the State Board of Health shall adopt a fee schedule which provides a differential fee for treatment, storage or disposal in Oklahoma of solid wastes generated outside the State of Oklahoma. Said fee shall be not more than ten times the fee for treatment, storage or disposal in the State of Oklahoma of solid wastes generated within the State of Oklahoma. If a federal law is enacted to authorize a prohibition by one state upon the importation of solid wastes from another state based upon the actions or inactions of such other state, then the State Board of Health shall adopt regulations establishing the criteria for the operation of such prohibition.

B. The Department is directed to pursue reciprocal agreements regarding fees with all other states which transport solid waste into Oklahoma, provided that any reciprocal agreement shall not allow the fee to be less than the instate solid waste fee for Oklahoma. Fee schedules may be adjusted by the State Board of Health to provide for such reciprocity.

SECTION 9. 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.