

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 683

BY: GILES and CAPPS of the
SENATE

and

LEIST, WIDENER, GRIESER
and HUDSON of the HOUSE

AS INTRODUCED

AN ACT RELATING TO THE OKLAHOMA SOLID WASTE

MANAGEMENT ACT; AMENDING 63 O.S. 1991, SECTIONS 1-2302, 1-2414, 1-2414.1, 1-2416 AND 1-2417, WHICH RELATE TO SOLID AND HAZARDOUS WASTE DISPOSAL SITES; DEFINING TERMS; PROHIBITING CERTAIN PERSONS FROM OWNING OR OPERATING A SOLID WASTE DISPOSAL FACILITY; PROHIBITING TRANSPORTATION OF SOLID WASTE TO UNPERMITTED SITES; 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; PROVIDING FOR CERTAIN GOVERNMENT UNITS TO POST FINANCIAL ASSURANCES FOR CLOSURE OF LAND DISPOSAL SITES; PROVIDING FOR DEPARTMENT TO REDUCE SECURITY AFTER FINAL CLOSURE IS COMPLETE; DELETING EXEMPTION FOR CERTAIN SITES TO COVER SOLID WASTE WEEKLY OR MONTHLY; 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 TO CHARGE IN STATE SOLID WASTE FEES; 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)~~ 1. "Affiliated person" includes but is not limited to:
- 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,
 - c. any person owning or controlling more than five percent (5%) of the applicant's debt or equity, and
 - d. any person who through relationship by affinity or consanguinity or who through any other relationship would be reasonably expected to significantly influence the applicant in decisions or actions which could adversely affect the environment;

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,
- e. a listing of any federal environmental agency and any state environmental agency that has or has had regulatory responsibility over the applicant, and
- f. any other relevant information the Commissioner may require that relates to the competency, reliability or

responsibility of the applicant and affiliated persons;

~~(2)~~ 4. "Department" means the State Department of Health;

~~(3)~~ 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;

~~(4)~~ 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;

~~(5)~~ 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;

~~(6)~~ 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;

~~(7)~~ 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;

~~(8)~~ 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;

~~(9)~~ 13. "Recycling" means to reuse a material that would otherwise be disposed of as waste, with or without reprocessing;

~~(10)~~ 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; ~~and~~

~~(11)~~ 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 where the solid waste that is transferred has been generated by the occupants, residents, or functions of the facility, or
- b. A citizens' collection station.

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, ~~except as specified in subsection C of this section;~~

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 ~~F~~ 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 ~~B~~ 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 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~~ 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.

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

~~E.~~ 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.

~~F.~~ 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 1-2414.1, 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 Oklahoma Solid Waste Management Act, Section 1-2300 et seq. of this title, for any submittals by the same applicant for the same site.

~~B. For all land disposal site permits, the Department shall require posting of security for proper final closure, maintenance, and monitoring of solid waste disposal sites. The Department shall require posting of an amount sufficient to cover the estimated final closure costs for the projected operation of a site plus the eight-year post-closure maintenance and monitoring period. 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 4. 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 ~~and,~~ plans and specifications for final ~~grading, final cover, proper drainage, groundwater monitoring where applicable, and revegetation,~~ closure and the maintenance and monitoring of such works for ~~eight (8) years~~ thirty (30) years or such post-closure 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.~~ 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 other than units of state or federal 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 state or federal 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.~~ 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 ~~begins~~ is complete, the Department may ~~from time to time~~ allow a reduction in the amount of security to reflect the anticipated costs which remain.

D. F. 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~~ by September 1, 1992.

SECTION 5. 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 ~~and regulations~~ 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, Section 250 et seq. and Section 301 et seq. of Title 75 of the Oklahoma Statutes. 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 ~~and regulations~~ 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. ~~Except when a significant adverse environmental problem may arise, owners and operators of disposal sites serving fewer than five thousand (5,000) population equivalent shall not be required to provide more than weekly coverage of all deposited solid waste, and owners and operators of disposal sites serving fewer than one~~

~~thousand five hundred (1,500) population equivalent shall not be required to provide more than monthly coverage of all deposited solid waste. Owners and operators of all other disposal sites must provide daily coverage of all deposited solid waste.~~ The Board may by regulation provide that the Department may authorize a variance from the specific requirements of a particular ~~regulation~~ rule provided that the applicant for a variance has demonstrated that compliance with the ~~regulation~~ rule will be met by substituted technology which equals or exceeds the protection accorded by the particular ~~regulation~~ or 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 ~~regulations~~ rules, the applicant shall be required to incorporate the technology, process or procedure established under the ~~regulations~~ and 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 ~~and regulations~~ 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 6. 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. No permit shall be transferred so long as the current inspection records of the Department evidence a lack of substantial compliance with the rules adopted by the State Board of Health.

G. 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.

H. The State Board of Health shall adopt rules, pursuant to the Administrative Procedures Act, Section 250 et seq. and 301 et seq. of Title 75 of the Oklahoma Statutes, as may be necessary and appropriate to implement the provisions of this section.

SECTION 7. 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 a reciprocal agreement with states bordering the State of Oklahoma and with states in the same United States Environmental Protection Agency region as the State of Oklahoma to allow regulated solid wastes generated within agreeing states to be charged the in-state solid waste fees. Fee schedules may be adjusted by the State Board of Health to provide for such reciprocity.

SECTION 8. 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.

43-2-1407

MJM