

ENROLLED HOUSE
BILL NO. 1516

By: Beutler of the House

and

Easley of the Senate

An Act relating to environment and natural resources; authorizing municipalities to sell or otherwise convey certain property used as a solid waste disposal site or landfill; providing certain limitations; providing for public hearing and resolution; amending 63 O.S. 1991, Sections 1-2421, as amended by Section 149, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993, 1-2416.1, as last amended by Section 157, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993, 1-2416, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 4, Chapter 338, O.S.L. 1994 and 1-2305, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 162, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1994, Sections 2-10-304, 2-10-501, 2-10-701 and 2-10-802), which relate to Solid Waste Management Act; providing for granting of certain variances; providing certain restrictions; modifying who can make certain certification for nonhazardous industrial solid waste; requiring certain persons to install scales by specified period of time; providing for testing and certification; requiring weighing of certain solid waste; requiring written recordation; authorizing estimates; providing for alternate determination; providing method for calculation; requiring certain notices; providing for contents; requiring certain records for waste received; modifying and removing certain fees; providing for collection of fees; providing for retainage of certain amount; requiring certain use of retainage; providing for certain reductions; providing exceptions; authorizing certain waivers and exemptions; providing process; specifying certain requirements and restrictions; providing for certain exemption; modifying certain reporting requirements; providing certain procedures; requiring certain plans; providing for exemption certification; providing for contents; requiring recognition; authorizing certain retainages; providing for remittance of additional percentage; removing provisions, procedures, authorizations and requirements for collection of a solid waste fee; providing for certain suspensions of orders; providing for reevaluation of permits; providing for contracts with certain governmental entities and associated entities relating to promotion of recycling of

solid waste; providing for funding; providing maximum; providing purpose; setting certain requirements; requiring certain report; providing for distribution; setting certain time periods; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-10-902 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Pursuant to the provisions of this section, any municipality may sell or otherwise convey any of its property within or without the limits of the municipality which is used or has been used as a solid waste disposal site or landfill or for the collection or transfer of solid waste. The provisions of this section shall apply to all such real property owned by the municipality which has been acquired or dedicated for the public use or purpose and for the benefit of the residents of the municipality.

B. The property of the municipality which is used or has been used as a solid waste disposal site or landfill or for the collection or transfer of solid waste may be sold or otherwise conveyed by the municipality if:

1. The municipal governing body provides for a public hearing on the issue of the disposal or conveyance of the property; and

2. A resolution authorizing the execution of any sale or disposal of the property is properly passed and published pursuant to law or ordinance.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-2421, as amended by Section 149, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1994, Section 2-10-304), is amended to read as follows:

Section 2-10-304. A. Requests for variances from specific requirements of any particular rule must be made a part of the permit application of any applicant and the opportunity to request a public meeting or administrative permit hearing, or both, shall have been offered prior to authorization of the variance to any applicant, including any unit of government. Further, any application for a variance for substitute technology which equals or exceeds the protection accorded by the particular rule shall not be granted unless an opportunity to request a public meeting or administrative permit hearing, or both, has been offered.

B. The Except as otherwise provided in this subsection, the Department shall not approve a variance from the rules of the Board for a solid waste disposal site to be located within any one-hundred year flood plain unless the variance is conditioned upon the subsequent redefinition of the one-hundred year plain to not include the land area proposed for the variance. A variance may be granted for the siting of a solid waste transfer station within a one-hundred year flood plain conditioned upon the requirement that no solid waste will be retained or stored by any means during nonoperating hours on any portion of the permitted site that is within the one-hundred year flood plain.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-2416.1, as last amended by Section 157, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1994, Section 2-10-501), is amended to read as follows:

Section 2-10-501. A. The Department may issue a permit for a landfill disposal site, which is not a hazardous waste facility,

which accepts unspecified nonhazardous 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 is on a proposed site on property, owned or operated by a person who also owns or operates a hazardous waste facility or solid waste facility, on or contiguous to property on which a hazardous 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 rules promulgated 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 hazardous waste landfill; or

3. The site is proposed and designed as a nonhazardous industrial solid waste landfill which will be owned, operated, or owned and operated by an industry or manufacturer for its exclusive noncommercial use; or

4. The landfill is owned or operated by a municipality or is a privately owned landfill which regularly serves one or more municipalities and which has been accepting nonhazardous industrial solid waste under approval of the Department.

B. The provisions of this section shall apply to all pending applications for which final agency action has not been taken, future permit applications and facilities which are not fully operational.

C. Except as otherwise provided in subsection A of this section, the Department shall not allow a solid waste disposal site to accept any nonhazardous industrial solid waste type unless:

1. Said site is permitted by the Department to accept such waste type;

2. The landfill is owned or operated by a municipality or is a privately owned landfill which regularly serves one or more municipalities and which has been accepting nonhazardous industrial solid waste under approval of the Department; or

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

D. 1. New landfills which accept nonhazardous industrial solid waste shall not be constructed nor shall such existing landfills be expanded which are located within a seismic impact zone unless the applicant demonstrates that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

2. No nonhazardous industrial solid waste landfill shall be located within five (5) miles of a known epicenter of an earthquake of more than 4.0 on the Richter Scale or a number V on the modified Mercalli Scale as recorded by the Oklahoma Geological Survey.

3. Paragraphs 1 and 2 of this subsection shall not apply to a nonhazardous industrial solid waste landfill which is owned or operated by:

a. an industry or manufacturer and utilized for such industry's or manufacturer's exclusive noncommercial use, or

b. a municipality, or is a privately owned landfill which regularly serves one or more municipalities, and which has been accepting nonhazardous industrial solid waste under approval of the Department.

E. 1. Except as otherwise provided by this subsection, the Department shall not issue, amend or modify a permit to allow a solid waste landfill to accept more than one type of nonhazardous industrial solid waste for disposal unless said landfill is equipped with a composite liner and a leachate collection system designed and constructed in compliance with rules promulgated by the Board.

2. Any landfill which is owned, operated, or owned and operated by an industry or manufacturer and utilized for such industry's or manufacturer's exclusive noncommercial use may be required to install a composite liner and a leachate collection system as determined to be necessary by the Department on a case-by-case basis.

3. The Department shall not require composite liners and leachate collection systems for any nonhazardous industrial solid waste landfill initially licensed by the Department prior to July 1, 1992, which is owned and operated by:

- a. an industry or manufacturer and utilized for such industry's or manufacturer's exclusive noncommercial use, or
- b. a municipality, or is a privately owned landfill which regularly serves one or more municipalities, and which has been accepting nonhazardous industrial solid waste under approval of the Department.

F. No limitation shall be placed on the percentage of nonhazardous industrial solid waste that may be accepted for disposal at solid waste landfills which have a composite liner and a leachate collection system designed and constructed in compliance with rules promulgated by the Board.

G. Solid waste disposal site operators shall submit to the Department an itemized monthly report of the type, quantity and source of nonhazardous industrial solid waste accepted the previous month.

H. The generator of a nonhazardous industrial solid waste or a party to a remediation project under an order of the Department shall certify to the Department that the waste is not a hazardous waste as such term is defined in the Oklahoma Hazardous Waste Disposal Act.

I. Any generator seeking to exclude a specific nonhazardous industrial solid waste, which is also an inert waste, from the provisions of this section may petition the Department for a regulatory exclusion. The generator shall demonstrate to the satisfaction of the Department that the waste is inert and that it may be properly disposed.

J. Unless otherwise specified in this section, by January 1, 1993, solid waste landfills existing on the effective date of this section which are required by this section to utilize composite liners and leachate collection systems and are not doing so shall cease to accept nonhazardous industrial solid waste.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-2416, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 4, Chapter 338, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-10-701), is amended to read as follows:

Section 2-10-701. A. All disposal site owners shall provide a closure plan to the Department of Environmental Quality for approval which defines operational phases and includes cost estimates, and plans and specifications for final closure. A site may be closed in phases according to a closure plan approved by the Department.

1. Owners of landfills that receive household solid waste, defined as Municipal Solid Waste Landfill Facilities in the federal regulations adopted under Subtitle D of the federal Solid Waste

Disposal Act, and owners of commercial nonhazardous industrial waste landfills shall provide for the maintenance and monitoring of such works for thirty (30) years. Provided, the owner of any landfill that stops receiving waste on or before April 9, 1994, and has completed final closure of the site on or before October 9, 1994, shall provide for the maintenance and monitoring of such site for eight (8) years after final closure has been completed. A permittee who stopped receiving waste at his permitted solid waste municipal landfill on or before April 9, 1994, may apply to the Department for a modification of his permit to operate an on-site solid waste transfer station, a yard-waste composting facility or a citizen's collection station. Provided no land disposal occurs, such site shall not require monitoring or financial assurance as a municipal solid waste landfill.

2. 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 under the federal Solid Waste Disposal Act.

3. Disposal sites other than land disposal sites 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. The Department shall require that financial assurances be provided in an amount sufficient to cover the estimated cost of closure and any post-closure. An increase in financial assurance shall be required when any permittee deviates from the approved closure plan or when the cost of closure or post-closure is found to have increased. Owners of landfills that receive household solid waste shall increase financial assurance if corrective action is required.

C. 1. Disposal site owners shall provide financial assurance to guarantee the performance of final closure and for any required post-closure. The state shall be the sole beneficiary of any such assurance solely for the cost of performance of closure and post-closure and shall have a security interest therein.

2. The financial assurance shall be in a form described in rules promulgated by the Board or the owner may provide the Department with cash or certificates of deposit payable to the Department of Environmental Quality Revolving Fund for deposit with the State Treasurer's Office.

3. Owners of disposal sites which receive waste after April 9, 1994, shall provide financial assurance for closure and any applicable post-closure on or before April 9, 1995, unless such date is extended by the federal Environmental Protection Agency pursuant to Subtitle D of the federal Resource, Conservation and Recovery Act in which case the financial assurance shall be provided on or before April 9, 1996. This subsection shall not apply to units of the federal government.

4. Financial assurance provided prior to the effective date of this act as a condition of issuance of any permit or any agreement with the Department shall continue in effect. In lieu of the performance guarantee mechanisms specified herein, owners or operators of a nonhazardous industrial solid waste landfill which is owned or operated by an industry or manufacturer for its exclusive noncommercial use may satisfy the financial assurance requirements for closure, post-closure and maintenance by meeting the requirements of a corporate financial test and corporate guarantee similar to that applicable to hazardous waste facilities. Any unit of local government or public trust of which it is a beneficiary may satisfy financial assurance requirements for closure and, when

required, post-closure, by participating in a statewide trust capable of guaranteeing performance of such closure and post-closure.

D. When financial security is required, it shall remain in effect until closure and any post-closure 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 and post-closure. The Department may allow a reduction in the amount of security to reflect the anticipated costs which remain.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-2305, as renumbered by Section 359, Chapter 145, O.S.L. 1993 and as last amended by Section 162, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1994, Section 2-10-802), is amended to read as follows:

Section 2-10-802. A. 1. On Owners or operators of landfill disposal sites which are not generator owned and operated nonhazardous industrial waste monofills shall install scales by January 1, 1996. Such scales shall be tested and certified as required by Division 1 of Part C of Article 5 of the Oklahoma Agricultural Code.

2. The owner or operator shall upon receipt weigh all waste received and record the weight in writing. If scales at a disposal site are not operative, tonnage shall be estimated on a volume basis whereby the volume reported shall be no less than the volume capacity of the containers or, if none, of the vehicles delivering the waste, and one cubic yard of solid waste shall be calculated to weigh one-third (1/3) ton. The owner or operator shall place notice in the disposal site's operating record of the time and date at which the scales became inoperable, describe the steps taken to repair them, and note the date use was resumed. If daily use has not resumed within thirty (30) days after the scales became inoperable, the owner or operator shall give written notice to the Department.

3. The owner or operator shall also maintain a written record of the weight or volume of any solid waste received which is productively reused or recovered and sold in accordance with the landfill disposal site's permit.

B. 1. Except as otherwise provided by this subsection, 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 or landfills accepting nonhazardous industrial waste within Oklahoma when the waste is generated from outside of Oklahoma, in accordance with Section 163 of this act, whichever is higher January 1, 1996:

- a. owners and operators of landfill disposal sites which receive an average of less than one hundred (100) tons of solid waste per operating day shall assess a fee of One Dollar and fifty cents (\$1.50) per ton of solid waste received for disposal. A total of fifty cents (\$.50) per ton of such fee shall be retained by the owner or operator and used exclusively for capital improvement to their facilities and for the projects required pursuant to the Solid Waste Management Act or the disposal site's permit for such period of time necessary to recoup a capital investment of a total of Forty Thousand Dollars (\$40,000.00),
- b. when the owner or operators have recouped a capital investment of the total specified in subparagraph a of this paragraph, the fee to be assessed shall be One

Dollar and twenty-five cents (\$1.25) per ton of solid waste received for disposal. At such time, for a return with remittance filed on or before the due date, the owner or operator may deduct and retain ten percent (10%) of the fees collected, and

c. records documenting the projects and use of the funds shall be included with each return.

2. a. Owners and operators of landfill disposal sites which receive an average of more than one hundred (100) tons of solid waste per operating day shall assess a fee of One Dollar and fifty cents (\$1.50) per ton of solid waste received for disposal, retaining twenty-five cents (\$0.25) per ton for a period of time necessary to recoup a capital investment of Forty Thousand Dollars (\$40,000.00). At the end of such period the fee shall revert to One Dollar and twenty-five cents (\$1.25) per ton. For a return with remittance filed on or before the due date, the owner or operator may deduct and retain ten percent (10%) of the fees collected.

b. Records documenting the capital investment and the use of the funds shall be included with each return.

3. The fee shall not be imposed on:

a. the solid waste received which is productively reused or recovered in accordance with the landfill disposal site's permit. The owner or operator shall include records pertaining to this fee exemption in the quarterly return of fees to the Department, and

b. generator owned and operated nonhazardous waste land disposal monofills and waste subject to a fee pursuant to Section 2-10-803 of this title. For emergencies and other special events, the Department and the owner or operator of a site subject to this section may enter into a formal agreement to waive the fee.

4. Large industrial waste generators who generate over ten thousand (10,000) tons of nonhazardous industrial solid waste in the state in a calendar year may annually apply to the Department for a certificate exempting the disposal of such generated waste in excess of ten thousand (10,000) tons from the disposal fee authorized by this section. An applicant must have implemented a pollution prevention plan for such waste and filed it with the Department, provided operational documentation regarding such plan and paid the disposal fee on ten thousand (10,000) tons of the waste during the calendar year of application. The Department-issued exemption certificates shall be valid for the remainder of the calendar year of application, may contain conditions, and, upon presentation by authorized persons, shall be recognized by owners or operators of landfill disposal sites subject to this section.

~~2.~~ 5. 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.~~ 6. 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~~ quarterly 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.~~ 7. Not later than thirty (30) days after the end of the ~~month~~ quarter to which such a return applies, the owner or operator shall mail to the Department the return for that ~~month~~ quarter together with the fees collected during that ~~month~~ quarter as indicated on the return.

~~5.~~ 8. 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.~~ 9. For any quarterly return filed more than thirty (30) days after the due date or extension date, the owner or operator shall remit an additional five percent (5%) of the fees collected during the month to which the return applies. If the fees are not remitted within sixty (60) days of the last day of the ~~month~~ quarter 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 (\$0.25) 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. 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 of each year. 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 (\$0.25) 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.~~

10. If the owner or operator misrepresents, or fails to properly measure or record, the amount of waste received or fails to remit fees within sixty (60) days after the last day of the quarter during which they were collected, the landfill disposal site's permit shall be summarily suspended by order and the Department shall initiate the process of revoking the permit and may require closure of the landfill.

C. 1. The Department shall expend funds collected pursuant to the provisions of this section solely for the administration and enforcement of the provisions of the Oklahoma Solid Waste Management Act and for the development of solid waste technical assistance programs, solid waste public environmental education programs and educational curricula, solid waste studies, development of a statewide solid waste plan, and solid waste recycling and litter prevention programs.

2. In order to assist the Department of Environmental Quality regarding its responsibilities relating to the promotion of recycling of solid waste, beginning July 1, 1996, and each fiscal year thereafter, the Department shall contract with units of local government, political subdivisions of this state, components of The Oklahoma State System of Higher Education, local and statewide organizations representing municipalities or counties, or substate planning districts recognized by the Oklahoma Department of Commerce, for up to a total of One Hundred Thousand Dollars (\$100,000.00) and to the extent such monies are available for projects promoting the recycling of solid waste. Local governments, political subdivisions of this state, components of The Oklahoma State System of Higher Education, local and statewide organizations representing municipalities and counties and substate planning districts recognized by the Oklahoma Department of Commerce desiring to contract with the Department for such projects shall meet the application requirements of rules promulgated by the Environmental Quality Board and the criteria established by a recycling priorities plan prepared annually by the Department after review and comment by the Solid Waste Management Advisory Council. Except as otherwise provided by this section, contracts for such projects shall not be granted to state agencies.

3. Any litter prevention program shall be developed by the Department in conjunction with the State Department of Transportation.

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

E. On or before September 1, 1996, and each year thereafter, the Department of Environmental Quality shall prepare a report of income and expenditures for the period of each fiscal year in which solid waste fee monies authorized by this section were received and such report shall be distributed to members of the Solid Waste

Management Advisory Council for review. By November 1 of each year the Council shall submit to the Executive Director, Governor, Speaker of the House of Representatives and President Pro Tempore of the Senate, its written comments on the comparison of income with program expenditures.

SECTION 6. This act shall become effective January 1, 1996.

Passed the House of Representatives the 22nd day of May, 1995.

Speaker of the House of
Representatives

Passed the Senate the 23rd day of May, 1995.

President of the Senate