

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)
2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1025

By: Easley of the Senate

and

Leist and Braddock of the
House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to environment and natural resources; amending Section 1, Chapter 311, O.S.L. 1995, 63 O.S. 1991, Section 1-2414, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 1, Chapter 371, O.S.L. 1997, Section 7, Chapter 50, O.S.L. 1992, as amended by Section 147, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993, Section 1-2416.1, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 2, Chapter 200, O.S.L. 1997, Section 1-2416, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 3, Chapter 371, O.S.L. 1997, Section 4, Chapter 371, O.S.L. 1997, and Section 1-2305, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 5, Chapter 371, O.S.L. 1997 (27A O.S. Supp. 1997, Sections 2-10-205, 2-10-301, 2-10-302, 2-10-501, 2-10-701, 2-10-701.1 and 2-10-802), which relate to the Oklahoma Solid Waste Management Act; removing requirement for Department of Environmental Quality to submit certain recycling report; prohibiting Department from taking certain enforcement actions against units of local governments for remediating certain illegal dumps; authorizing Department to recommend certain type of remediation under certain circumstances; removing certain restrictions requiring consent by certain landowners on landfill disposal site permitting; deleting requirement for certain solid waste permit applicants to file certain disclosure statements; removing exemption for certain composite liners and leachate collection systems for certain municipal nonhazardous industrial solid waste landfill disposal sites; requiring certain postclosure periods for certain industrial landfill disposal sites mandated by the federal Solid Waste Disposal Act or the Department of Environmental Quality; requiring the Department to establish financial assurance mechanisms for postclosure costs; stating methods for disposal site owners to satisfy financial assurance requirements; prohibiting payments in excess of certain time period; prohibiting Executive Director to employ outside counsel to establish or administer Oklahoma Landfill Closure Authority; requiring certain scales to be installed on or within five miles of a landfill disposal site; modifying uses for expenditure of solid waste funds to include

environmental improvements; authorizing Department to expend certain funds for incentive payments to persons, firms or corporations generating energy by utilizing solid waste landfill methane; requiring the Environmental Quality Board to promulgate rules; limiting payments to three years; providing for amount of payments to be determined based on amount of energy generated and the cost of production; repealing 63 O.S. 1991, Section 1-2420, as amended by Section 145, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993, Section 1, Chapter 128, O.S.L. 1993, as amended by Section 7, Chapter 285, O.S.L. 1995, Section 1-2414.1, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 26, Chapter 373, O.S.L. 1994, and Sections 1-2401, 1-2402, 1-2403, 1-2404, 1-2405, 1-2406, 1-2407, 1-2408, 1-2409, 1-2410 and 1-2411, as amended by Sections 166, 167, 168, 169, 170, 171, 172, 173, 174, 175 and 176, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1997, Sections 2-10-204, 2-10-301.1, 2-10-305, 2-10-1101, 2-10-1102, 2-10-1103, 2-10-1104, 2-10-1105, 2-10-1106, 2-10-1107, 2-10-1108, 2-10-1109, 2-10-1110 and 2-10-1111), which relate to statewide integrated solid waste management plan, permits for certain lateral expansions of landfill disposal sites, requirements for on-site observation for certain disposal site permits, and regional solid waste management districts; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 1, Chapter 311, O.S.L. 1995 (27A O.S. Supp. 1997, Section 2-10-205), is amended to read as follows:

Section 2-10-205. A. The Legislature hereby recognizes and declares that it is necessary for the public interest, health and economic welfare to encourage and promote the recycling and reuse of recoverable materials. The recycling and reuse of recoverable materials substantially reduces disposal costs and the tremendous flow of solid waste to Oklahoma's dwindling solid waste sites. It is equally necessary that Oklahoma preserve, expand and encourage economic growth. The recycling and reuse of recoverable materials will create new employment, provide and allow for expansion of existing manufacturing, thereby increasing employment and payrolls as well as upgrading the state's natural resources.

B. The Legislature declares that the goal of this state, hereinafter called the Oklahoma Recycling Initiative, is that each incorporated municipality with a population greater than five thousand (5,000), as determined by the most recent decennial census by the Bureau of the Census of the United States Department of Commerce, should develop and operate a recycling program which will generate raw materials for the manufacturing industries located in this state. Due to the importance of the paper industry to Oklahoma's economy, each recycling and reuse program should at a minimum include the collection of waste paper.

In implementing any recycling program the Oklahoma Recycling Initiative the municipality may:

1. Consider the overall status of the solid waste collection system and management within the municipality, including generation, recycling and disposal;

2. Review five- , ten- , and twenty-year municipality-wide goals for reducing the amount of solid waste through the recycling of recoverable materials;

3. Evaluate alternative methods for achieving the Oklahoma Recycling Initiative through municipality-wide collection systems or through integrated recoverable materials management on a regional basis;

4. Establish a comprehensive and sustained public information and education program concerning the recoverable materials program's features and requirements; and

5. Include in the program such other information recommended by the Department of Environmental Quality.

~~C. Each municipality should submit a report of its progress towards meeting the recycling goal pursuant to this section to the Department of Environmental Quality on or before January 1 of each year. The Department of Environmental Quality shall, on or before February 1 of each year, submit a report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Governor detailing the efforts of the municipalities in achieving the Oklahoma Recycling Initiative.~~

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-2414, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 1, Chapter 371, O.S.L. 1997 (27A O.S. Supp. 1997, Section 2-10-301), is amended to read as follows:

Section 2-10-301. A. Except as otherwise 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 hazardous waste disposal has been issued by the Department of Environmental Quality;

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 hazardous waste disposal has been issued by the Department; ~~and~~

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

4. The Department shall not bring an enforcement action against any unit of local government which undertakes any remediation of an illegal dump which the local government had no role in creating provided that the unit of local government first consults with and follows the remediation advice of the Department. The Department is authorized to recommend remediation of illegal dumps by burial of the material on location, when such burial appears to pose less risk than failure to remediate.

B. No provision of the Oklahoma Solid Waste Management Act shall be construed ~~so as~~ to prevent a person from disposing of solid waste from his ~~own~~ or her household upon ~~his own land~~ his or her property provided such disposal does not create a nuisance or a hazard to the public health or environment or does not violate a local government ordinance.

~~C. 1. 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 paragraph 2 of this subsection. Such 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. Such consent shall not be required as a condition for the issuance of:~~

- ~~a. any renewal permit for an existing landfill site, or~~
- ~~b. a permit for any modification or expansion of an existing landfill site, or~~
- ~~c. 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.~~

~~2. 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.~~

~~3. 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~~ Notice of permit actions shall be in accordance with the Uniform Permitting Act.

D. The Department shall issue a permit to be effective for the life of a given site. In order to assure adequate financial assurance as required by this section, ~~the~~ each permittee who operates a landfill disposal site, other than a generator owned and operated private industrial nonhazardous monofill, shall submit information on an annual basis at such times and in such form as the Department shall require, sufficient to allow the Department to know the remaining landfill life.

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 Department 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.

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

H. No permit shall be required for a disposal site constructed pursuant to an order issued by the Department in an effort to remediate an abandoned or inactive waste site. Such disposal site shall only receive waste from the remediation project, and shall be designed, constructed, and operated in accordance with the technical standards established in the applicable rules promulgated by the Environmental Quality Board. Such rules shall not be less stringent than those which would apply to a federally funded remediation project pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act.

SECTION 3. AMENDATORY Section 7, Chapter 50, O.S.L. 1992, as amended by Section 147, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1997, Section 2-10-302), is amended to read as follows:

Section 2-10-302. 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 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 Department of Environmental Quality may require pursuant to this section 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; 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~~ hazardous 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.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-2416.1, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 2, Chapter 200, O.S.L. 1997 (27A O.S. Supp. 1997, Section 2-10-501), is amended to read as follows:

Section 2-10-501. A. The Department of Environmental Quality 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 Environmental Quality 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. 1. Before sending waste identified as nonhazardous industrial solid waste for disposal in an Oklahoma solid waste landfill, a certification that the waste is not a hazardous waste as such term is defined in the Oklahoma Hazardous Waste Management Act shall be submitted to the Department. Such certification shall be made by:

- a. the original generator,
- b. a person who identifies and is under contract with a generator and whose activities under the contract cause the waste to be generated,
- c. a party to a remediation project under an order of the Department or under the auspices of the Oklahoma Energy Resources Board or other agencies of other states, or
- d. a person responding to an environmental emergency.

2. The Department may require the certifier to substantiate the certification by appropriate means, when it is reasonable to believe such waste may be hazardous. Such substantiation may include Material Safety Data Sheets, an explanation of specific technical process knowledge adequate to identify that the waste is not a hazardous waste, or laboratory analysis.

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.

K. Notwithstanding any other provision of the Oklahoma Solid Waste Management Act, no solid waste permit shall be required for an incineration facility burning nonhazardous solid waste for the purpose of disposing of the waste if:

1. The incinerator has an air quality permit from the Department;
2. Storage of waste at the site prior to incineration is limited to the lesser of twenty (20) tons or the volume reasonably expected to be incinerated within ten (10) days, considering the nature of the waste and the manufacturer's approved charge rate for the incinerator;
3. The waste is stored at a location and managed in a manner which minimizes the risk of a release, exposure or other incident which could threaten human health or the environment, including the storage of liquids within adequate secondary containment;
4. All ashes and residues from the incineration process are managed in accordance with applicable statutes and rules; and
5.
 - a. The incinerator is owned and operated by a business or industry for the incineration of its own waste exclusively, or
 - b. The waste feed rate of the incinerator does not exceed five (5) tons per day.

SECTION 5. 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 3, Chapter 371, O.S.L. 1997 (27A O.S. Supp. 1997, 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 postclosure period or such postclosure time period as may be mandated under the federal Solid Waste Disposal Act. Generator owned and operated private industrial nonhazardous landfill disposal sites and all construction and demolition landfill disposal sites shall only be required to have an eight-year postclosure period or such postclosure time period as may be mandated under the federal Solid Waste Disposal Act or determined necessary by the Department on a case-by-case basis considering the nature of the waste disposed.

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 postclosure. The Department shall establish financial assurance mechanisms which will ensure that the funds necessary to meet the costs of closure, postclosure care and corrective action for known releases will be available whenever such funds are needed. An increase in financial assurance shall be required when any permittee deviates from the approved closure plan or when the cost of closure or postclosure 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 as identified in subsection A of this section shall provide financial assurance to guarantee the performance of final closure and for any required postclosure as required by the Department pursuant to this section. Except in cases where owners utilize a financial test provided by rule, the state shall be the sole beneficiary of any such assurance solely for the cost of performance of closure and postclosure and shall have a security interest therein.

2. The financial assurance shall be in a form described in rules promulgated by the Environmental Quality 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. Disposal site owners may satisfy the financial assurance requirements of this section by creating a trust in accordance with the federal regulations adopted under Subtitle D of the federal Solid Waste Disposal Act. Municipal solid waste disposal site owners may satisfy the financial assurance requirements of this section by creating an escrow account in accordance with Board rules adopted under the Oklahoma Solid Waste Management Act. These financial assurance mechanisms shall provide for payments by the disposal site owner which will allow for closure and

corrective action obligations to be spread out over the economic life of the disposal site, but shall not exceed fifteen (15) years.

4. Owners of disposal sites which receive waste after April 9, 1994, shall provide financial assurance for closure and any applicable postclosure 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. If any disposal site owner fails to provide such financial assurance by the applicable deadline, the Department shall cause the landfill disposal site permit to be summarily suspended by order. The Department shall initiate the process of revoking the permit and may require closure of the landfill. This subsection shall not apply to units of the federal government.

~~4.~~ 5. Financial assurance provided prior to June 8, 1994, as a condition of issuance of any permit or any agreement with the Department shall continue in effect unless the permittee replaces such assurance with an additional mechanism or combination of mechanisms authorized by the Department.

~~5.~~ 6. In lieu of the performance guarantee mechanisms specified in this section, 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, postclosure and maintenance by meeting the requirements of a corporate financial test and corporate guarantee similar to that applicable to hazardous waste facilities.

~~6.~~ 7. Any unit of local government or public trust of which it is a beneficiary may satisfy financial assurance requirements for closure and, when required, postclosure, by participating in a statewide trust capable of guaranteeing performance of such closure and postclosure.

~~7.~~ 8. Private owners and operators of disposal sites required by this section to provide financial assurance may satisfy this obligation through participation in the Oklahoma Landfill Closure

Authority, created pursuant to the provisions of Section 4 2-10-701.1 of this ~~act~~ title.

~~8.~~ 9. Solid waste transfer stations, processing facilities, or composting facilities are exempt from the financial assurance requirements of this section if they principally manage municipal solid waste.

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

SECTION 6. AMENDATORY Section 4, Chapter 371, O.S.L. 1997 (27A O.S. Supp. 1997, Section 2-10-701.1), is amended to read as follows:

Section 2-10-701.1 A. The Governor is hereby authorized to accept beneficial interest on behalf of the State of Oklahoma in an express trust titled the Oklahoma Landfill Closure Authority which shall be an agency of the state for the specific object and purpose of providing a financial assurance mechanism to owners and operators of private, nongovernmental solid waste disposal sites in order to satisfy requirements for closure and postclosure care of and corrective action as necessary to the disposal sites. Such trust shall be created pursuant to the provisions of this section.

B. Private owners and operators of disposal sites required by the Oklahoma Solid Waste Management Act to provide financial assurance may satisfy this obligation through participation in the Oklahoma Landfill Closure Authority.

C. The authorization specified by subsection A of this section shall be effective only if:

1. The Oklahoma Landfill Closure Authority is established as a public trust pursuant to this section with the state as a beneficiary;

2. The Oklahoma Landfill Closure Authority is established for the furtherance and accomplishment of providing a financial

assurance mechanism for private, nongovernmental owners and operators of solid waste disposal sites;

3. The instrument creating the trust provides for the appointment, succession, powers, duties, terms and manner of removal of trustees and such other conditions and requirements specified by this section. In all respects, terms of the instrument shall be controlling;

4. The instrument creating the trust provides for the appointment of three ex officio trustees, one of whom shall be Executive Director of the Department of Environmental Quality; one of whom shall be the chair of the Solid Waste Management Advisory Council; and one of whom shall be the Secretary of Environment. The trustees shall serve until their successors have been duly appointed and qualified. Trustees shall serve without compensation, except that they shall be entitled to reimbursement for all actual and necessary travel expenses incurred in the performance of their official duties in accordance with the provisions of the trust instrument. Any authorized travel expenses shall be paid from funds of the trust authority;

5. As a condition precedent, approval is received from the Attorney General that the trust is in the proper form; and

6. A certified copy of the trust agreement is filed with the Secretary of State.

D. Each officer handling funds of the public trust shall furnish a good and sufficient fidelity bond in an amount and with surety as may be specified and approved by the Governor of this state. The cost of the bond shall be paid from funds of the trust authority.

E. The trust established pursuant to this section shall not be amended without a two-thirds (2/3) vote of approval of the trustees of such trust. Any such amendment is subject to the approval of the Governor of the State of Oklahoma. Such amendments shall be sent to the Governor within fifteen (15) days of their adoption.

F. The trustees of the Oklahoma Landfill Closure Authority created pursuant to this section shall make and adopt bylaws for

the due and orderly administration of regulation of the affairs of the Authority. All bylaws and amendments thereto of the Authority shall be submitted in writing to the Governor of this state and to the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The Governor shall approve the proposed bylaws before they take effect.

G. The Oklahoma Landfill Closure Authority shall comply with:

1. The annual budget provisions of the state requiring a balanced budget. A copy of the budget shall be submitted to the Governor each year;

2. The Public Competitive Bidding Act of 1974;

3. The Oklahoma Open Records Act;

4. The Oklahoma Open Meeting Act;

5. The Administrative Procedures Act; and

6. The provisions of this section.

H. Funds deposited in the finance assurance mechanism program of the trust and interest thereon shall be used exclusively and solely for closure and postclosure care of, and corrective action as necessary to, the disposal sites whose owners and operators are participating in such program and have contributed the necessary amounts for their disposal site's closure and postclosure care or corrective action. Funds collected from a disposal site may only be used to meet the responsibilities under this section for such disposal site.

I. Any monies obtained by the Authority pursuant to this section shall be deposited in an insured interest-bearing account or may be invested in readily marketable classes of securities including bonds or other interest-bearing obligations of the United States of America or guaranteed both as to interest and principal by the United States; provided, that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of claims.

J. 1. The trustees of the Oklahoma Landfill Closure Authority shall cause an audit to be made of, including but not limited to, the funds, accounts, and fiscal affairs of such trust,

such audit to be ordered within thirty (30) days of the close of each fiscal year of the trust.

2. The necessary expense of said audits, including the cost of typing, printing, and binding, shall be paid from funds of the trust.

3. The audits required by this subsection shall be certified with the opinion of a certified public accountant or a licensed public accountant. The required audit shall adhere to standards set by the State Auditor and Inspector. One copy of the annual audit shall be filed with the State Auditor and Inspector, one copy with the Governor of the State of Oklahoma and one copy with the Speaker of the House of Representatives and the President Pro Tempore of the Senate not later than six (6) months following the close of each fiscal year of the trust.

4. In the event that the copy of such audit as required shall not be filed with the State Auditor and Inspector within the time herein provided, the State Auditor and Inspector hereby is authorized to employ, at the cost and expense of the trust, a certified public accountant or licensed public accountant to make the audit herein required.

K. The Oklahoma Landfill Closure Authority is authorized to:

1. Establish a financial assurance mechanism for private, nongovernmental owners and operators of disposal sites and to collect assessments or fees from participating owners and operators of solid waste disposal sites;

2. Employ and compensate such personnel as required to fulfill the purposes of this section;

3. Retain legal counsel as is required to fulfill the purposes of this section;

4. Sue and be sued;

5. Initiate prosecution and civil remedies necessary to collect any assessments or fees due and owing to the Authority from participating owners and operators of solid waste disposal sites;

6. Cooperate with local, state or national organizations, whether public or private, in carrying out the purposes of this

section, and to enter into such contracts as may be necessary; provided, however, no Authority funds shall be used, directly or indirectly, or as a result of contract or agreement with other persons or organizations, in lobbying, or in supporting or opposing political candidates, political officeholders, or legislation, either state or national;

7. Make such reasonable expenditures of funds as is necessary to carry out the provisions of this section;

8. Call and conduct such meetings and elections as may be necessary in carrying out the provisions of this section; and

9. Exercise such other powers as necessary to carry out the purposes of this section.

L. The operations of the trust shall be administered by the Department of Environmental Quality, which is hereby authorized to keep confidential, upon request of an owner or operator, any specific information pertaining to the finances of any disposal site.

M. The Oklahoma Landfill Closure Authority is not authorized to:

1. Issue or sell bonds;

2. Acquire lands by use of eminent domain; or

3. Engage in any activity or transaction that is not expressly authorized in the instruments or articles prescribing its creation except by express consent of the Legislature of the state.

N. 1. The Oklahoma Landfill Closure Authority shall be the regularly constituted authority of the beneficiary for the performance of the functions for which the trust shall have been created.

2. Except for acts of dishonesty, no trustee shall be charged personally with any liability whatsoever by reason of any act or omission committed or suffered in the performance of such trust or in the operation of the trust property. Except for acts of dishonesty, any act, liability for any omission or obligation of a trustee or the Authority, in the execution of such trust, or in the operation of the trust property, shall be subject to limits

specified by the Governmental Tort Claims Act. In no event shall the state be construed to be or become liable for any act, omission or obligation of a trustee or of the Board.

O. The Oklahoma Landfill Closure Authority may be terminated by agreement of the trustees and the Governor of this state, or may be terminated by the Legislature; provided, that such trust shall not be terminated while there exists outstanding any contractual obligations chargeable against the trust property.

P. Funds collected by the Oklahoma Landfill Closure Authority pursuant to this section shall not be subject to state budget and expenditure limitations. Such funds shall at no time become monies of the state or become part of the general budget of the state. Debts or obligations of the Authority shall not be construed to be debts or obligations of this state.

Q. The Authority established pursuant to the provisions of this section as a trust with the state as a beneficiary shall not otherwise be required to comply with any provisions established pursuant to Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes.

R. Compliance with the provisions of this section, by the Oklahoma Landfill Closure Authority, shall be and constitute a binding contract with the State of Oklahoma for the acceptance of the beneficial interest in the trust property by the Department of Environmental Quality, as designated beneficiary, and the application of the proceeds of the trust property and its operation for the purposes, and in accordance with the stipulations of the trust instrument.

S. The Executive Director shall not be authorized to employ outside personnel on a contractual fee basis to aid in establishing or administering the Oklahoma Landfill Closure Authority.

SECTION 7. 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 5, Chapter 371, O.S.L. 1997 (27A O.S. Supp. 1997, Section 2-10-802), is amended to read as follows:

Section 2-10-802. A. 1. 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 installed on or within five (5) miles of the landfill disposal site and shall be tested and certified as required by Section 5-61e of Title 2 of the Oklahoma Statutes relating to the authority of the ~~Oklahoma~~ Board of Agriculture to test annually the standards of weights and measures used by any city or county within the state and to approve if found to be correct.

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 of Environmental Quality.

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 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 Oklahoma Solid Waste Management Act or the disposal site's permit for such period of time necessary to recoup a capital investment, plus the interest costs expended in purchasing the scales, 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, plus the interest costs expended in purchasing the scales, 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. If a generator operates a landfill solely for waste from that generator, and if that generator chooses to seek the exemption authorized by this paragraph, the generator shall not be required to install scales or keep records relative to quantity of waste received for the landfill.

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.

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 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.

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

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.

9. For any quarterly return filed more than thirty (30) days after the last day of the quarter 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 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.

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, and other environmental improvements.

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.

4. a. To the extent that funds are available, the Department may also reimburse any governmental entity for equipment other than motor vehicles or buildings to separate, process, modify, convert or treat solid waste or recovered materials so that the resulting product is being used in a productive manner.
 - b. The reimbursements shall be from solid waste fee funds and shall not exceed twenty-five percent (25%) of the person's total project costs. No reimbursement may be larger than Twenty Thousand Dollars (\$20,000.00).
 - c. Reimbursements must be expended in accordance with rules promulgated by the Environmental Quality Board and criteria established through the Department's annual recycling priorities plan. The Department shall not expend more than Two Hundred Thousand Dollars (\$200,000.00) in each fiscal year for such reimbursements, nor shall the Department reimburse waste tire facilities that may be eligible for compensation from the Waste Tire Recycling Indemnity Fund.
5. a. The Department, in conjunction with the Corporation Commission, the Oklahoma Energy Resources Board and the Oklahoma Conservation Commission, may develop a plan to use suitable portions of the solid waste stream to reclaim Oklahoma lands damaged by oil and gas exploration and production or by surface mining activities.
 - b. To the extent that funds are available, the Department may use up to ten percent (10%) of the annual income from the fees received pursuant to the provisions of this section to implement the plan.

The Department may use its discretion in administering the funds for the purpose of this paragraph, but shall keep records subject to audit by the State Auditor and Inspector for good business practices.

6. a. To the extent that funds are available, after having reasonably met other specified uses of the solid waste fund, the Department is authorized to expend up to five percent (5%) of the total annual solid waste fee income for the purpose of making incentive payments to any person, firm or corporation located in this state generating energy by utilizing solid waste landfill methane.
- b. The Environmental Quality Board shall promulgate rules to administer the provisions of this paragraph.
- c. No person, firm or corporation shall be eligible to receive incentive payments as provided in subparagraph a of this paragraph for more than three (3) years. The amount of such payments shall be determined by the Department based on the amount of energy generated and the cost of production.

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 September 1 of 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 8. REPEALER 63 O.S. 1991, Section 1-2420, as amended by Section 145, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993, Section 1, Chapter 128, O.S.L. 1993, as amended by Section 7, Chapter 285, O.S.L. 1995, Section 1-2414.1, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 26, Chapter 373, O.S.L. 1994, and Sections 1-2401, 1-2402, 1-2403, 1-2404, 1-2405, 1-2406, 1-2407, 1-2408, 1-2409, 1-2410 and 1-2411, as amended by Sections 166, 167, 168, 169, 170, 171, 172, 173, 174, 175 and 176, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1997, Sections 2-10-204, 2-10-301.1, 2-10-305, 2-10-1101, 2-10-1102, 2-10-1103, 2-10-1104, 2-10-1105, 2-10-1106, 2-10-1107, 2-10-1108, 2-10-1109, 2-10-1110 and 2-10-1111), are hereby repealed.

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.

46-2-3388 MJM (<time=system>)