

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2276

By: Beutler

AS INTRODUCED

An Act relating to environment and natural resources; amending 63 O.S. 1991, Sections 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, and 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 2-10-301 and 2-10-802), which relate to the Oklahoma Solid Waste Management Act; modifying who is required to submit certain information; modifying solid waste disposal fees; providing an effective date; and declaring an emergency.

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

SECTION 1. 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 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;

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.

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 household upon his own land 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.

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 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 2. 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 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) One Dollar (\$1.00) 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, plus the interest costs expended in purchasing the scales, of a total of Forty Thousand Dollars (\$40,000.00), and~~

- ~~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.~~ 3. 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.~~ 4. 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.~~ 5. 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.~~ 6. 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.~~ 7. 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.~~ 8. 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.~~ 9. 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.

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 Energy Resources Board and the

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.

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 3. This act shall become effective July 1, 1998.

SECTION 4. 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.

