ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 1244 By: Shurden of the Senate

and

Leist of the House

(environment and natural resources - brownfields -

time period -

emergency)

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

"An Act relating to environment and natural resources; amending 63 O.S. 1991, Sections 1-2302, as last amended by Section 141, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 and 1-2305, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 1, Chapter 15, O.S.L. 1999 (27A O.S. Supp. 1999, Sections 2-10-103 and 2-10-802), which relate to the Oklahoma Solid Waste Management Act; modifying definitions; modifying plan requirements; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-2302, as last amended by Section 141, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1999, Section 2-10-103), is amended to read as follows:

Section 2-10-103. As used in the Oklahoma Solid Waste Management Act:

1. "Affiliated person" means:

a. any officer, director or partner of the applicant,

b. any person employed by the applicant as general or key manager who directs the operations of the site,

transfer station, or facility which is the subject of the application, or

c. any person owning or controlling more than five percent (5%) of the applicant's debt or equity;

2. "Disclosure statement" means a written statement by the applicant which contains:

a. the full name, business address, and social security number of the applicant, and all affiliated persons,

b. the full name and business address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%) or which is a parent company or subsidiary of the applicant, and a description of the ongoing organizational relationships as they may impact operations within the state,

c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental regulation,

d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant and affiliated person which resulted in a final agency order or final judgment by a court of record, including final order or judgment on appeal, in the ten (10) years immediately preceding the filing of the application relating to solid or hazardous waste. Such action shall include, without limitations, any permit denial or any sanction imposed by a state regulatory agency or the United States Environmental Protection Agency, and

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

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

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

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

6. "Inert waste" means any solid waste that is insoluble in water, chemically inactive, that will not leach contaminants, or is commonly found as a significant percentage of residential solid waste;

7. "History of noncompliance" means any past operations by an applicant or affiliated persons which clearly indicate a reckless disregard for environmental regulation, or a demonstrated pattern of prohibited conduct which could reasonably be expected to result in

adverse environmental impact if a permit were issued, as evidenced by findings, conclusions and rulings of any final agency order or final order or judgment of a court of record;

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

9. "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. The term "lithified earth material" shall not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface;

10. "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety percent (90%) or greater probability that the acceleration will not be exceeded in two hundred fifty (250) years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment;

11. "Monofill" means a landfill which is used to dispose of a single type of specified nonhazardous industrial solid waste, except for other nonhazardous industrial solid wastes which are not readily separable from the specified waste;

12. "Nonhazardous industrial solid waste" means any of the following wastes deemed by the Department to require special handling:

a. unusable industrial or chemical products,

b. solid waste generated by the release of an industrial product to the environment, or

c. solid waste generated by a manufacturing or industrial process.

The term "nonhazardous industrial solid waste" shall not include waste that is regulated as hazardous waste or is commonly found as a significant percentage of residential solid waste;

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

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

15. "Seismic impact zone" means an area with a ten percent (10%) or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in two hundred fifty (250) years;

16. "Solid waste" means all putrescible and nonputrescible refuse in solid ~~or~~, semisolid, or liquid form including, but not limited to, garbage, rubbish, ashes or incinerator residue, street refuse, dead animals, demolition wastes, construction wastes, solid or semisolid commercial and industrial wastes including explosives, biomedical wastes, chemical wastes, herbicide and pesticide wastes. The term "solid waste" shall not include:

a. scrap materials which are source separated for collection and processing as industrial raw materials, except when contained in the waste collected by or in behalf of a solid waste management system, or

b. used motor oil, which shall not be considered to be a solid waste, but shall be considered a deleterious substance, if the used motor oil is recycled for

energy reclamation and is ultimately destroyed when recycled;

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

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

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

a. a facility, such as an apartment complex or a large manufacturing plant, where the solid waste that is transferred has been generated by the occupants, residents, or functions of the facility,

b. a citizens' collection station, or

c. a waste collection system which leaves collected solid waste in enclosed containers along the collection route for later transport to a recycling or disposal facility serving the area; and

20. "Waste reduction" means to reduce the volume of waste requiring disposal.

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 1, Chapter 15, O.S.L. 1999 (27A O.S. Supp. 1999, 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 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.

4. The scale location restriction of this subsection shall not apply to federal or state military installations so long as:

a. the scales are located within the physical boundary of that installation, and

b. the disposal site receives waste only from that military installation.

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, 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 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 3. 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."

Passed the House of Representatives the 3rd day of April, 2000.

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Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 2000.

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President of the Senate