

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1444

By: Bonny

AS INTRODUCED

An Act relating to environment and natural resources; amending 63 O.S. 1991, Sections 1-2302, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 1, Chapter 184, O.S.L. 2000, 2258.4, as last renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 2, Chapter 364, O.S.L. 2000 (27A O.S. Supp. 2000, Sections 2-10-103 and 2-10-501), which relate to the Oklahoma Solid Waste Management Act; modifying and adding definitions; requiring nonhazardous solid waste handling facilities to be permitted; specifying conditions; prohibiting certain limitations; providing for applicability; requiring reports; requiring certain certification; providing certain exceptions; specifying certain conditions; providing exceptions from certain licensure requirements; requiring promulgation of certain time periods; authorizing extensions; providing for appeals; authorizing mediation on binding arbitration; removing certain language related to certain exceptions; providing for codification; 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 1-2302, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 1, Chapter 184, O.S.L. 2000 (27A O.S. Supp. 2000, 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, 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 The term "disposal site" shall not include:

- a. a manufacturing facility which processes scrap materials which have been separated for collection and processing as industrial raw materials, or
- b. a nonhazardous industrial solid waste handling facility;

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. "Nonhazardous industrial solid waste handling facility" means a facility including all contiguous property that receives nonhazardous industrial solid waste, temporarily accumulates nonhazardous industrial solid waste, incinerates, composts, shreds, compacts, bales, recovers, reduces or uses any other method, technique or process designed to change the physical character or composition of the waste to make it amenable for transportation or disposal offsite to permitted facilities and sends or transports nonhazardous industrial solid waste to:

- a. another nonhazardous solid waste handling facility,
- b. a solid waste disposal site,
- c. recycling facility, or
- d. another Department-authorized location;

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

~~15.~~ 16. "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.~~ 17. "Solid waste" means all putrescible and nonputrescible refuse in solid, 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.~~ 18. "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.~~ 19. "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.~~ 20. "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, or
- d. a nonhazardous industrial solid waste handling facility; and

~~20.~~ 21. "Waste reduction" means to reduce the volume of waste requiring disposal.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-10-502 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. 1. The Department of Environmental Quality may issue a nonhazardous industrial solid waste handling facility permit for a nonhazardous industrial solid waste handling facility which accepts nonhazardous industrial solid waste, only if the nonhazardous industrial solid 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 and otherwise complies with rules promulgated by the Environmental Quality Board.

2. No nonhazardous industrial solid waste handling facility permit shall be required pursuant to this section for an incineration facility burning nonhazardous solid waste for the purpose of disposing of the waste if:

- a. the incinerator has an air quality permit from the Department,
- b. storage of waste at the site prior to incineration is limited to the lesser of two hundred (200) tons or the volume reasonably expected to be incinerated within fifteen (15) days, considering the nature of the waste and the manufacturer's approved charge rate for the incinerator,
- c. 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,
- d. all ashes and residues from the incineration process are managed in accordance with applicable statutes and rules,
- e. (1) the incinerator is owned and operated by a business or industry for the incineration of its own waste exclusively, or  
(2) the waste feed rate of the incinerator does not exceed two hundred (200) tons per day, and
- f. a nonhazardous industrial solid waste handling facility which only handles nonhazardous industrial solid waste shall not be required to obtain a solid waste disposal permit pursuant to the Oklahoma Solid Waste Management Act.

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. No limitation shall be placed on the percentage of nonhazardous industrial solid waste that may be accepted at nonhazardous industrial solid waste handling facilities which are designed and constructed in compliance with rules promulgated by the Environmental Quality Board.

D. Nonhazardous industrial solid waste handling facilities shall submit to the Department an itemized monthly report of the type, quantity and source of nonhazardous industrial solid waste accepted the previous month. Nonhazardous industrial solid waste handling facilities that are owned and operated by an industry or manufacturer which are utilized for such industry's or manufacturer's exclusive noncommercial use are not required to submit monthly reports to the Department but shall maintain, in the operating record, information regarding the type and quantity of nonhazardous industrial waste accepted each month. Information maintained in the operating record shall be made available to the Department upon request.

E. 1. Before waste identified as nonhazardous industrial solid waste is received by an Oklahoma nonhazardous industrial solid waste handling facility, a written certification that the waste is not hazardous waste as such term is defined in the Oklahoma Hazardous Waste Management Act shall be submitted to the Oklahoma nonhazardous industrial solid waste handling facility. 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 licensed or permitted commercial recycling, processing, transfer, treatment, storage, handling or disposal facility,
- d. 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
- e. a person responding to an environmental emergency.

2. The certification shall be maintained at the nonhazardous industrial solid waste handling facility.

3. The certification shall include, but is not limited to, 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.

F. 1. Before waste identified as nonhazardous industrial solid waste is sent for disposal in an Oklahoma solid waste landfill, a written 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 nonhazardous industrial solid waste handling facility,
- b. the original generator,
- c. a person who identifies and is under contract with a generator and whose activities under the contract cause the waste to be generated,
- d. 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
- e. 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.

G. Any nonhazardous industrial solid waste handling facility 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 nonhazardous industrial solid waste handling facility shall demonstrate to the satisfaction of the Department that the waste is inert and that it may be properly disposed.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-2-105 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Environmental Quality Board shall promulgate rules detailing time periods for issuance of permits, licenses and certification issued pursuant to the provisions of the Oklahoma Environmental Quality Code. The total review period shall not extend beyond such time periods unless otherwise extended by written mutual agreement of the applicant and the Department of Environmental Quality.

B. If the application process is not completed within the time period specified in the rules and is not extended by mutual agreement, the Department of Environmental Quality shall issue an order denying the application. The denial of an application pursuant to this section is an appealable order pursuant to Article II of the Administrative Procedures Act.

C. In addition to or in lieu of an appeal pursuant to Article II of the Oklahoma Administrative Procedures Act, an applicant, upon denial of an application, may proceed to mediation or binding

arbitration or both mediation and binding arbitration as provided in the Dispute Resolution Act and the rules promulgated pursuant thereto.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 2258.4, as last renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 2, Chapter 364, O.S.L. 2000 (27A O.S. Supp. 2000, 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 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 an industry or manufacturer and utilized for such industry's or manufacturer's exclusive noncommercial use.

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. Solid waste disposal sites that are owned and operated by an industry or manufacturer which are utilized for such industry's or

manufacturer's exclusive noncommercial use are not required to submit monthly reports to the Department but shall maintain in the operating record information regarding the type and quantity of nonhazardous industrial waste accepted each month. Information maintained in the operating record shall be made available to the Department upon request.

~~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. This act shall become effective July 1, 2001.



SECTION 6. 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.

48-1-5034          KSM          6/12/15