

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1951

6 By: McNiell

7 COMMITTEE SUBSTITUTE

8 An Act relating to environment and natural resources;
9 amending 27A O.S. 2001, Sections 2-10-701, as amended
10 by Section 10, Chapter 118, O.S.L. 2003 and 2-10-802,
11 as last amended by Section 2, Chapter 301, O.S.L.
12 2010 (27A O.S. Supp. 2010, Sections 2-10-701 and 2-
13 10-802), which relate to the Oklahoma Solid Waste
14 Management Act; requiring financial assurance for
15 certain composting facilities; requiring assessment
16 on certain composting material; and providing an
17 effective date.

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

19 SECTION 1. AMENDATORY 27A O.S. 2001, Section 2-10-701,
20 as amended by Section 10, Chapter 118, O.S.L. 2003 (27A O.S. Supp.
21 2010, Section 2-10-701), is amended to read as follows:

22 Section 2-10-701. A. All disposal site owners shall provide a
23 closure plan to the Department of Environmental Quality for approval
24 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 1. Owners of landfills that receive household solid waste,
2 defined as Municipal Solid Waste Landfill Facilities in the federal
3 regulations adopted under Subtitle D of the federal Solid Waste
4 Disposal Act, and owners of commercial nonhazardous industrial waste
5 landfills shall provide for the maintenance and monitoring of such
6 works for thirty (30) years. Provided, the owner of any landfill
7 that stops receiving waste on or before April 9, 1994, and has
8 completed final closure of the site on or before October 9, 1994,
9 shall provide for the maintenance and monitoring of such site for
10 eight (8) years after final closure has been completed. A permittee
11 who stopped receiving waste at his permitted solid waste municipal
12 landfill on or before April 9, 1994, may apply to the Department for
13 a modification of his permit to operate an on-site solid waste
14 transfer station, a yard-waste composting facility or a citizen's
15 collection station. Provided no land disposal occurs, such site
16 shall not require monitoring or financial assurance as a municipal
17 solid waste landfill.

18 2. Generator owned and operated private industrial nonhazardous
19 monofills shall only be required to have an eight-year postclosure
20 period or such postclosure time period as may be mandated under the
21 federal Solid Waste Disposal Act. Generator owned and operated
22 private industrial nonhazardous landfill disposal sites and all
23 construction and demolition landfill disposal sites shall only be
24 required to have an eight-year postclosure period or such

1 postclosure time period as may be mandated under the federal Solid
2 Waste Disposal Act or determined necessary by the Department on a
3 case-by-case basis considering the nature of the waste disposed.

4 3. Disposal sites other than land disposal sites shall have a
5 closure plan which would accomplish the removal and proper disposal
6 of any remaining waste and the elimination of potential
7 environmental health hazards.

8 B. The Department shall require that financial assurances be
9 provided in an amount sufficient to cover the estimated cost of
10 closure and any postclosure. The Department shall establish
11 financial assurance mechanisms which will ensure that the funds
12 necessary to meet the costs of closure, postclosure care and
13 corrective action for known releases will be available whenever such
14 funds are needed. An increase in financial assurance shall be
15 required when any permittee deviates from the approved closure plan
16 or when the cost of closure or postclosure is found to have
17 increased. Owners of landfills that receive household solid waste
18 shall increase financial assurance if corrective action is required.

19 C. 1. Disposal site owners as identified in subsection A of
20 this section shall provide financial assurance to guarantee the
21 performance of final closure and for any required postclosure as
22 required by the Department pursuant to this section. Except in
23 cases where owners utilize a financial test provided by rule, the
24 state shall be the sole beneficiary of any such assurance solely for

1 the cost of performance of closure and postclosure and shall have a
2 security interest therein.

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

8 3. Disposal site owners may satisfy the financial assurance
9 requirements of this section by creating a trust in accordance with
10 the federal regulations adopted under Subtitle D of the federal
11 Solid Waste Disposal Act. Municipal solid waste disposal site
12 owners may satisfy the financial assurance requirements of this
13 section by creating an escrow account in accordance with Board rules
14 adopted under the Oklahoma Solid Waste Management Act. These
15 financial assurance mechanisms shall provide for payments by the
16 disposal site owner which will allow for closure and corrective
17 action obligations to be spread out over the economic life of the
18 disposal site, but shall not exceed fifteen (15) years.

19 4. Owners of disposal sites which receive waste after April 9,
20 1994, shall provide financial assurance for closure and any
21 applicable postclosure on or before April 9, 1995, unless such date
22 is extended by the federal Environmental Protection Agency pursuant
23 to Subtitle D of the federal Resource, Conservation and Recovery
24 Act. If any disposal site owner fails to provide such financial

1 assurance by the applicable deadline, the Department shall cause the
2 landfill disposal site permit to be summarily suspended by order.
3 The Department shall initiate the process of revoking the permit and
4 may require closure of the landfill. This subsection shall not
5 apply to units of the federal government.

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

11 6. In lieu of the performance guarantee mechanisms specified in
12 this section, owners or operators of a nonhazardous industrial solid
13 waste landfill which is owned or operated by an industry or
14 manufacturer for its exclusive noncommercial use may satisfy the
15 financial assurance requirements for closure, postclosure and
16 maintenance by meeting the requirements of a corporate financial
17 test and corporate guarantee similar to that applicable to hazardous
18 waste facilities.

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

24

1 8. ~~Solid~~ Except as otherwise provided by this paragraph, solid
2 waste transfer stations, processing facilities, or composting
3 facilities are exempt from the financial assurance requirements of
4 this section if they principally manage municipal solid waste.
5 Commercial composting facilities that accept food waste, excluding
6 facilities that principally accept material for composting that is
7 agricultural in origin, shall provide financial assurance for the
8 removal and proper management of all of the feedstock and product
9 material that the site is capable of storing.

10 D. When financial assurance is required, it shall remain in
11 effect until closure and any postclosure is completed. The amount
12 of such assurance shall be set by the Department and shall not be
13 less than the anticipated cost of contracting for performance of
14 each phase of the closure plan and postclosure. The Department may
15 allow a reduction in the amount of assurance to reflect the
16 anticipated costs which remain.

17 SECTION 2. AMENDATORY 27A O.S. 2001, Section 2-10-802,
18 as last amended by Section 2, Chapter 301, O.S.L. 2010 (27A O.S.
19 Supp. 2010, Section 2-10-802), is amended to read as follows:

20 Section 2-10-802. A. 1. Owners or operators of landfill
21 disposal sites which are not generator-owned and -operated
22 nonhazardous industrial waste monofills and owners or operators of
23 commercial incinerators shall install scales. Such scales shall be
24 installed on or within five (5) miles of the landfill disposal site

1 or incinerator and shall be tested and certified as required by
2 Section 14-35 of Title 2 of the Oklahoma Statutes relating to the
3 authority of the State Board of Agriculture to test the standards of
4 weights and measures within the state and to approve if found to be
5 correct. For purposes of this section, any reference to
6 "incinerator" or "incineration" shall encompass waste-to-energy
7 facilities that produce recoverable energy by high-temperature
8 combustion.

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

23 3. The owner or operator shall also maintain a written record
24 of the weight or volume of any solid waste received which is

1 productively reused or recovered in materially the same form as when
2 received and sold in accordance with the permit for the landfill
3 disposal site or incinerator.

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

- 6 a. the scales are located within the physical boundary of
7 that installation, and
- 8 b. the disposal site or incinerator receives waste only
9 from that military installation.

10 B. 1. Except as otherwise provided by this subsection:

- 11 a. owners and operators of landfill disposal sites or
12 commercial incinerators which receive an average of
13 less than one hundred (100) tons of solid waste per
14 operating day shall assess a fee of One Dollar and
15 fifty cents (\$1.50) per ton of solid waste received
16 for disposal or incineration. A total of fifty cents
17 (\$.50) per ton of such fee shall be retained by the
18 owner or operator and used exclusively for capital
19 improvement to their facilities and for the projects
20 required pursuant to the Oklahoma Solid Waste
21 Management Act or the permit for the disposal site or
22 incinerator for such period of time necessary to
23 recoup a capital investment, plus the interest costs
24

1 expended in purchasing the scales, of a total of Forty
2 Thousand Dollars (\$40,000.00),

- 3 b. when the owner or operators have recouped a capital
4 investment of the total specified in subparagraph a of
5 this paragraph, the fee to be assessed shall be One
6 Dollar and twenty-five cents (\$1.25) per ton of solid
7 waste received for disposal or incineration. At such
8 time, for a return with remittance filed on or before
9 the due date, the owner or operator may deduct and
10 retain ten percent (10%) of the fees collected, and
11 c. records documenting the projects and use of the funds
12 shall be included with each return.

- 13 2. a. Owners and operators of landfill disposal sites or
14 commercial incinerators which receive an average of
15 more than one hundred (100) tons of solid waste per
16 operating day shall assess a fee of One Dollar and
17 fifty cents (\$1.50) per ton of solid waste received
18 for disposal or incineration, retaining twenty-five
19 cents (\$0.25) per ton for a period of time necessary
20 to recoup a capital investment, plus the interest
21 costs expended in purchasing the scales, of Forty
22 Thousand Dollars (\$40,000.00). At the end of such
23 period the fee shall revert to One Dollar and twenty-
24 five cents (\$1.25) per ton. For a return with

1 remittance filed on or before the due date, the owner
2 or operator may deduct and retain ten percent (10%) of
3 the fees collected.

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

6 3. Owners and operators of commercial composting facilities
7 that accept food waste, excluding facilities that principally accept
8 material for composting that is agricultural in origin, shall assess
9 a fee of One Dollar and twenty-five cents (\$1.25) per ton of all
10 composting material received. For a return with remittance filed on
11 or before the due date, the owner or operator may deduct and retain
12 ten percent (10%) of the fees collected.

13 4. a. Owners and operators of landfill disposal sites or
14 commercial incinerators may be reimbursed for capital
15 investment costs that have been or will be expended
16 for the purchase and installation of a wheel wash
17 system for use at the landfill disposal site or
18 commercial incinerator facility. To be eligible to
19 claim this reimbursement, the owner or operator must
20 notify the Department no later than January 1, 2011,
21 of the intent to claim the reimbursement, and the
22 wheel wash system must be in place and operational no
23 later than January 1, 2012. Reimbursement shall be
24 paid only after the wheel wash system is installed and

1 operational and each landfill disposal site or
2 commercial incinerator shall be eligible for
3 reimbursement for only one wheel wash system.

4 b. The owner or operator shall provide records
5 documenting the capital investment costs of the wheel
6 wash system to the Department.

7 c. At such time as the wheel wash system is in place and
8 operational and the capital investment costs have been
9 approved by the Department, the Department shall
10 reimburse the owner or operator the approved costs,
11 subject to the limitations in subparagraph d of this
12 paragraph. The Department shall reimburse eligible
13 applicants in the order of approval until that
14 limitation has been reached. If there are multiple
15 eligible applicants awaiting reimbursement, the
16 Department shall apportion the reimbursement amount
17 among the eligible applicants according to the capital
18 investment costs approved by the Department.

19 d. If the total amount reimbursed to all eligible owners
20 and operators reaches Fifty Thousand Dollars
21 (\$50,000.00) within any state fiscal year, the
22 Department shall notify the owners and operators, and
23 thereafter the owners and operators shall not receive
24 any reimbursement until the next state fiscal year.

1 e. The Environmental Quality Board is authorized to
2 promulgate rules as necessary to implement the
3 provisions of the Solid Waste Management Act,
4 including rules specifying minimum standards or other
5 criteria for wheel wash systems necessary to qualify
6 for the reimbursement.

7 ~~4.~~ 5. The fee assessed by paragraph 1 or 2 shall not be imposed

8 on:

9 a. the solid waste received which is productively reused
10 or recovered in materially the same form as when
11 received in accordance with the permit for the
12 landfill disposal site or incinerator. The owner or
13 operator shall include records pertaining to this fee
14 exemption in the quarterly return of fees to the
15 Department,

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

22 c. ash produced as a result of the combustion in a
23 commercial incinerator of waste on which the fee
24 imposed by this section has been paid.

1 ~~5-~~ 6. Large industrial waste generators who generate over ten
2 thousand (10,000) tons of nonhazardous industrial solid waste in the
3 state in a calendar year may annually apply to the Department for a
4 certificate exempting the disposal or incineration of such generated
5 waste in excess of ten thousand (10,000) tons from the disposal and
6 incineration fee authorized by this section. An applicant must have
7 implemented a pollution prevention plan for such waste and filed it
8 with the Department, provided operational documentation regarding
9 such plan and paid the disposal and incineration fee on ten thousand
10 (10,000) tons of the waste during the calendar year of application.
11 The Department-issued exemption certificates shall be valid for the
12 remainder of the calendar year of application, may contain
13 conditions, and, upon presentation by authorized persons, shall be
14 recognized by owners or operators of landfill disposal sites and
15 incinerators subject to this section. If a generator operates a
16 landfill or incinerator solely for waste from that generator, and if
17 that generator chooses to seek the exemption authorized by this
18 paragraph, the generator shall not be required to install scales or
19 keep records relative to quantity of waste received for the landfill
20 or incinerator.

21 ~~6-~~ 7. The fee assessed by paragraph 1 or 2 of this subsection
22 is to be a charge to waste producers in addition to any charges
23 specified in any contract or elsewhere. The fee shall be imposed
24 upon and passed through to disposers of waste using the facility.

1 ~~7.~~ 8. The owner or operator of a solid waste disposal site or
2 incinerator or the owner or operator of a composting facility shall
3 collect the fee levied pursuant to this subsection as trustee for
4 the state and shall prepare and file with the Department quarterly
5 returns indicating:

- 6 a. the total tonnage of solid wastes received for
7 disposal or incineration at the gate of the site, and
- 8 b. the total amount of the fees collected pursuant to
9 this section.

10 ~~8.~~ 9. Not later than thirty (30) days after the end of the
11 quarter to which such a return applies, the owner or operator shall
12 mail to the Department the return for that quarter together with the
13 fees collected during that quarter as indicated on the return.

14 ~~9.~~ 10. The owner or operator may receive an extension of not
15 more than thirty (30) days for filing the return and remitting the
16 fees, provided that:

- 17 a. the owner or operator has submitted a request for an
18 extension in writing to the Department together with a
19 detailed description of why the extension is
20 requested,
- 21 b. the Department has received the request not later than
22 the day on which the return is required to be filed,
23 and
- 24 c. the Department has approved the request.

1 ~~10.~~ 11. For any quarterly return filed more than thirty (30)
2 days after the last day of the quarter or extension date, the owner
3 or operator shall remit an additional five percent (5%) of the fees
4 collected during the month to which the return applies. If the fees
5 are not remitted within sixty (60) days of the last day of the
6 quarter during which they were collected, the owner or operator
7 shall pay an additional fifteen percent (15%) of the amount of the
8 fees for each month that they are late.

9 ~~11.~~ 12. If the owner or operator misrepresents, or fails to
10 properly measure or record, the amount of waste received or fails to
11 remit fees within sixty (60) days after the last day of the quarter
12 during which they were collected, the permit for the landfill
13 disposal site or incinerator or composting facility shall be
14 summarily suspended by order and the Department shall initiate the
15 process of revoking the permit and may require closure of the
16 landfill or incinerator or composting facility.

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

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

22 3. Any litter prevention program shall be developed by the
23 Department in conjunction with the Department of Transportation.
24

1 4. a. To the extent that funds are available, the Department
2 may also reimburse any governmental entity for
3 equipment other than motor vehicles or buildings to
4 separate, process, modify, convert or treat solid
5 waste or recovered materials so that the resulting
6 product is being used in a productive manner.

7 b. The reimbursements shall be from solid waste fee funds
8 and shall not exceed twenty-five percent (25%) of the
9 person's total project costs. No reimbursement may be
10 larger than Twenty Thousand Dollars (\$20,000.00).

11 c. Reimbursements must be expended in accordance with
12 rules promulgated by the Environmental Quality Board
13 and criteria established through the Department's
14 annual recycling priorities plan. The Department
15 shall not expend more than Two Hundred Thousand
16 Dollars (\$200,000.00) in each fiscal year for such
17 reimbursements, nor shall the Department reimburse
18 waste tire facilities that may be eligible for
19 compensation from the Waste Tire Recycling Indemnity
20 Fund.

21 5. a. The Department, in conjunction with the Corporation
22 Commission, the Oklahoma Energy Resources Board and
23 the Oklahoma Conservation Commission, may develop a
24 plan to use suitable portions of the solid waste

1 stream to reclaim Oklahoma lands damaged by oil and
2 gas exploration and production or by mining
3 activities.

4 b. To the extent that funds are available, the Department
5 may use up to ten percent (10%) of the annual income
6 from the fees received pursuant to the provisions of
7 this section to implement the plan. The Department
8 may use its discretion in administering the funds for
9 the purpose of this paragraph, but shall keep records
10 subject to audit by the State Auditor and Inspector
11 for good business practices.

12 6. a. To the extent that funds are available, after having
13 reasonably met other specified uses of the solid waste
14 fund, the Department is authorized to expend up to
15 five percent (5%) of the total annual solid waste fee
16 income for the purpose of making incentive payments to
17 any person, firm or corporation located in this state
18 generating energy by utilizing solid waste landfill
19 methane or steam produced by a commercial incinerator.

20 b. The Environmental Quality Board shall promulgate rules
21 to administer the provisions of this paragraph.

22 c. No person, firm or corporation shall be eligible to
23 receive incentive payments as provided in subparagraph
24 a of this paragraph for more than three (3) years.

1 The amount of such payments shall be determined by the
2 Department based on the amount of energy generated and
3 the cost of production.

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

7 E. On or before September 1 of each year, the Department of
8 Environmental Quality shall prepare a report of income and
9 expenditures for the period of each fiscal year in which solid waste
10 fee monies authorized by this section were received and such report
11 shall be distributed to members of the Solid Waste Management
12 Advisory Council for review. By November 1 of each year, the
13 Council shall submit to the Executive Director, Governor, Speaker of
14 the House of Representatives and President Pro Tempore of the Senate
15 its written comments on the comparison of income with program
16 expenditures.

17 SECTION 3. This act shall become effective November 1, 2011.

18
19 53-1-7032 EK 03/02/11
20
21
22
23
24