

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1951

By: McNiel and Pittman

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8 COMMITTEE SUBSTITUTE

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

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

20 SECTION 1. AMENDATORY 27A O.S. 2001, Section 2-10-701,
21 as amended by Section 10, Chapter 118, O.S.L. 2003 (27A O.S. Supp.
22 2010, Section 2-10-701), is amended to read as follows:

23 Section 2-10-701. A. All disposal site owners shall provide a
24 closure plan to the Department of Environmental Quality for approval
25 which defines operational phases and includes cost estimates, and

1 plans and specifications for final closure. A site may be closed in
2 phases according to a closure plan approved by the Department.

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

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

1 private industrial nonhazardous landfill disposal sites and all
2 construction and demolition landfill disposal sites shall only be
3 required to have an eight-year postclosure period or such
4 postclosure time period as may be mandated under the federal Solid
5 Waste Disposal Act or determined necessary by the Department on a
6 case-by-case basis considering the nature of the waste disposed.

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

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

22 C. 1. Disposal site owners as identified in subsection A of
23 this section shall provide financial assurance to guarantee the
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1 performance of final closure and for any required postclosure as
2 required by the Department pursuant to this section. Except in
3 cases where owners utilize a financial test provided by rule, the
4 state shall be the sole beneficiary of any such assurance solely for
5 the cost of performance of closure and postclosure and shall have a
6 security interest therein.

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

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

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1 4. Owners of disposal sites which receive waste after April 9,
2 1994, shall provide financial assurance for closure and any
3 applicable postclosure on or before April 9, 1995, unless such date
4 is extended by the federal Environmental Protection Agency pursuant
5 to Subtitle D of the federal Resource, Conservation and Recovery
6 Act. If any disposal site owner fails to provide such financial
7 assurance by the applicable deadline, the Department shall cause the
8 landfill disposal site permit to be summarily suspended by order.
9 The Department shall initiate the process of revoking the permit and
10 may require closure of the landfill. This subsection shall not
11 apply to units of the federal government.

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

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

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

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

17 D. When financial assurance is required, it shall remain in
18 effect until closure and any postclosure is completed. The amount
19 of such assurance shall be set by the Department and shall not be
20 less than the anticipated cost of contracting for performance of
21 each phase of the closure plan and postclosure. The Department may
22 allow a reduction in the amount of assurance to reflect the
23 anticipated costs which remain.

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

4 Section 2-10-802. A. 1. Owners or operators of landfill
5 disposal sites which are not generator-owned and -operated
6 nonhazardous industrial waste monofills and owners or operators of
7 commercial incinerators shall install scales. Such scales shall be
8 installed on or within five (5) miles of the landfill disposal site
9 or incinerator and shall be tested and certified as required by
10 Section 14-35 of Title 2 of the Oklahoma Statutes relating to the
11 authority of the State Board of Agriculture to test the standards of
12 weights and measures within the state and to approve if found to be
13 correct. For purposes of this section, any reference to
14 "incinerator" or "incineration" shall encompass waste-to-energy
15 facilities that produce recoverable energy by high-temperature
16 combustion.

17 2. The owner or operator shall upon receipt weigh all waste
18 received and record the weight in writing. If scales at a disposal
19 site or incinerator are not operative, tonnage shall be estimated on
20 a volume basis whereby the volume reported shall be no less than the
21 volume capacity of the containers or, if none, of the vehicles
22 delivering the waste, and one cubic yard of solid waste shall be
23 calculated to weigh one-third (1/3) ton. The owner or operator

1 shall place notice in the operating record of the disposal site or
2 incinerator of the time and date at which the scales became
3 inoperable, describe the steps taken to repair them, and note the
4 date use was resumed. If daily use has not resumed within thirty
5 (30) days after the scales became inoperable, the owner or operator
6 shall give written notice to the Department of Environmental
7 Quality.

8 3. The owner or operator shall also maintain a written record
9 of the weight or volume of any solid waste received which is
10 productively reused or recovered in materially the same form as when
11 received and sold in accordance with the permit for the landfill
12 disposal site or incinerator.

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

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

17 b. the disposal site or incinerator receives waste only
18 from that military installation.

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

20 a. owners and operators of landfill disposal sites or
21 commercial incinerators which receive an average of
22 less than one hundred (100) tons of solid waste per
23 operating day shall assess a fee of One Dollar and
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1 fifty cents (\$1.50) per ton of solid waste received
2 for disposal or incineration. A total of fifty cents
3 (\$.50) per ton of such fee shall be retained by the
4 owner or operator and used exclusively for capital
5 improvement to their facilities and for the projects
6 required pursuant to the Oklahoma Solid Waste
7 Management Act or the permit for the disposal site or
8 incinerator for such period of time necessary to
9 recoup a capital investment, plus the interest costs
10 expended in purchasing the scales, of a total of Forty
11 Thousand Dollars (\$40,000.00),

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

- 22 2. a. Owners and operators of landfill disposal sites or
23 commercial incinerators which receive an average of
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1 more than one hundred (100) tons of solid waste per
2 operating day shall assess a fee of One Dollar and
3 fifty cents (\$1.50) per ton of solid waste received
4 for disposal or incineration, retaining twenty-five
5 cents (\$0.25) per ton for a period of time necessary
6 to recoup a capital investment, plus the interest
7 costs expended in purchasing the scales, of Forty
8 Thousand Dollars (\$40,000.00). At the end of such
9 period the fee shall revert to One Dollar and twenty-
10 five cents (\$1.25) per ton. For a return with
11 remittance filed on or before the due date, the owner
12 or operator may deduct and retain ten percent (10%) of
13 the fees collected.

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

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

- 1 4. a. Owners and operators of landfill disposal sites or
2 commercial incinerators may be reimbursed for capital
3 investment costs that have been or will be expended
4 for the purchase and installation of a wheel wash
5 system for use at the landfill disposal site or
6 commercial incinerator facility. To be eligible to
7 claim this reimbursement, the owner or operator must
8 notify the Department no later than January 1, 2011,
9 of the intent to claim the reimbursement, and the
10 wheel wash system must be in place and operational no
11 later than January 1, 2012. Reimbursement shall be
12 paid only after the wheel wash system is installed and
13 operational and each landfill disposal site or
14 commercial incinerator shall be eligible for
15 reimbursement for only one wheel wash system.
- 16 b. The owner or operator shall provide records
17 documenting the capital investment costs of the wheel
18 wash system to the Department.
- 19 c. At such time as the wheel wash system is in place and
20 operational and the capital investment costs have been
21 approved by the Department, the Department shall
22 reimburse the owner or operator the approved costs,
23 subject to the limitations in subparagraph d of this

1 paragraph. The Department shall reimburse eligible
2 applicants in the order of approval until that
3 limitation has been reached. If there are multiple
4 eligible applicants awaiting reimbursement, the
5 Department shall apportion the reimbursement amount
6 among the eligible applicants according to the capital
7 investment costs approved by the Department.

8 d. If the total amount reimbursed to all eligible owners
9 and operators reaches Fifty Thousand Dollars
10 (\$50,000.00) within any state fiscal year, the
11 Department shall notify the owners and operators, and
12 thereafter the owners and operators shall not receive
13 any reimbursement until the next state fiscal year.

14 e. The Environmental Quality Board is authorized to
15 promulgate rules as necessary to implement the
16 provisions of the Solid Waste Management Act,
17 including rules specifying minimum standards or other
18 criteria for wheel wash systems necessary to qualify
19 for the reimbursement.

20 ~~4.~~ 5. The fee assessed by paragraph 1 or 2 shall not be imposed

21 on:

22 a. the solid waste received which is productively reused
23 or recovered in materially the same form as when

1 received in accordance with the permit for the
2 landfill disposal site or incinerator. The owner or
3 operator shall include records pertaining to this fee
4 exemption in the quarterly return of fees to the
5 Department,

6 b. generator-owned and -operated nonhazardous waste land
7 disposal monofills and waste subject to a fee pursuant
8 to Section 2-10-803 of this title. For emergencies
9 and other special events, the Department and the owner
10 or operator of a site subject to this section may
11 enter into a formal agreement to waive the fee, and

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

15 ~~5.~~ 6. Large industrial waste generators who generate over ten
16 thousand (10,000) tons of nonhazardous industrial solid waste in the
17 state in a calendar year may annually apply to the Department for a
18 certificate exempting the disposal or incineration of such generated
19 waste in excess of ten thousand (10,000) tons from the disposal and
20 incineration fee authorized by this section. An applicant must have
21 implemented a pollution prevention plan for such waste and filed it
22 with the Department, provided operational documentation regarding
23 such plan and paid the disposal and incineration fee on ten thousand

1 (10,000) tons of the waste during the calendar year of application.
2 The Department-issued exemption certificates shall be valid for the
3 remainder of the calendar year of application, may contain
4 conditions, and, upon presentation by authorized persons, shall be
5 recognized by owners or operators of landfill disposal sites and
6 incinerators subject to this section. If a generator operates a
7 landfill or incinerator solely for waste from that generator, and if
8 that generator chooses to seek the exemption authorized by this
9 paragraph, the generator shall not be required to install scales or
10 keep records relative to quantity of waste received for the landfill
11 or incinerator.

12 ~~6-~~ 7. The fee assessed by paragraph 1 or 2 of this subsection
13 is to be a charge to waste producers in addition to any charges
14 specified in any contract or elsewhere. The fee shall be imposed
15 upon and passed through to disposers of waste using the facility.

16 ~~7-~~ 8. The owner or operator of a solid waste disposal site or
17 incinerator or the owner or operator of a composting facility shall
18 collect the fee levied pursuant to this subsection as trustee for
19 the state and shall prepare and file with the Department quarterly
20 returns indicating:

21 a. the total tonnage of solid wastes received for
22 disposal or incineration at the gate of the site, and
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1 b. the total amount of the fees collected pursuant to
2 this section.

3 ~~8.~~ 9. Not later than thirty (30) days after the end of the
4 quarter to which such a return applies, the owner or operator shall
5 mail to the Department the return for that quarter together with the
6 fees collected during that quarter as indicated on the return.

7 ~~9.~~ 10. The owner or operator may receive an extension of not
8 more than thirty (30) days for filing the return and remitting the
9 fees, provided that:

10 a. the owner or operator has submitted a request for an
11 extension in writing to the Department together with a
12 detailed description of why the extension is
13 requested,

14 b. the Department has received the request not later than
15 the day on which the return is required to be filed,
16 and

17 c. the Department has approved the request.

18 ~~10.~~ 11. For any quarterly return filed more than thirty (30)
19 days after the last day of the quarter or extension date, the owner
20 or operator shall remit an additional five percent (5%) of the fees
21 collected during the month to which the return applies. If the fees
22 are not remitted within sixty (60) days of the last day of the
23 quarter during which they were collected, the owner or operator

1 shall pay an additional fifteen percent (15%) of the amount of the
2 fees for each month that they are late.

3 ~~11.~~ 12. If the owner or operator misrepresents, or fails to
4 properly measure or record, the amount of waste received or fails to
5 remit fees within sixty (60) days after the last day of the quarter
6 during which they were collected, the permit for the landfill
7 disposal site or incinerator or composting facility shall be
8 summarily suspended by order and the Department shall initiate the
9 process of revoking the permit and may require closure of the
10 landfill or incinerator or composting facility.

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

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

17 3. Any litter prevention program shall be developed by the
18 Department in conjunction with the Department of Transportation.

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

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

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

17 5. a. The Department, in conjunction with the Corporation
18 Commission, the Oklahoma Energy Resources Board and
19 the Oklahoma Conservation Commission, may develop a
20 plan to use suitable portions of the solid waste
21 stream to reclaim Oklahoma lands damaged by oil and
22 gas exploration and production or by mining
23 activities.

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

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

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

19 c. No person, firm or corporation shall be eligible to
20 receive incentive payments as provided in subparagraph
21 a of this paragraph for more than three (3) years.
22 The amount of such payments shall be determined by the
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1 Department based on the amount of energy generated and
2 the cost of production.

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

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

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

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18 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE, WILDLIFE AND
19 ENVIRONMENT, dated 03-02-2011 - DO PASS, As Amended and Coauthored.
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