

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

A Bill

Act 758 of 1999
HOUSE BILL 1645

5 By: Representative T. Steele
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For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE 8-6-1601 THROUGH 8-6-
10 1603 TO ASSURE THAT ADEQUATE FUNDS ARE AVAILABLE WHEN
11 NEEDED TO MEET THE ESTIMATED COSTS FOR CLOSURE AND
12 POST-CLOSURE CARE OF A SOLID WASTE MANAGEMENT
13 FACILITY; AND FOR OTHER PURPOSES."
14

Subtitle

15 "AN ACT TO ASSURE ADEQUATE FUNDS FOR
16 CLOSURE AND POST-CLOSURE CARE OF A SOLID
17 WASTE MANAGEMENT FACILITY."
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code 8-6-1601 is amended to read as follows:
24 "8-6-1601. Purpose.

25 The purpose of this subchapter is to establish the procedure for posting
26 financial assurance for all permitted ~~municipal solid waste landfills, solid~~
27 ~~waste management systems, or solid waste disposal~~ solid waste management
28 facilities. The procedure for issuance of permits for solid waste management
29 ~~systems and for solid waste management disposal sites and~~ facilities shall be
30 as provided in the rules and regulations adopted by the ~~commission~~ Arkansas
31 Pollution Control and Ecology Commission under this subchapter or as otherwise
32 provided by law. After an application to operate a ~~disposal site or facility~~
33 has been reviewed and approved, but before a permit is issued, the applicant
34 shall post with the ~~Department of Pollution Control and Ecology~~ Arkansas
35 Department of Environmental Quality, on forms prescribed by the department in
36 accordance with the regulations issued under this subchapter, a corporate

1 surety bond for performance or an acceptable alternative, such as a
 2 certificate of deposit or letter of credit, payable to the department and
 3 conditional upon faithful performance of all requirements of this subchapter,
 4 the regulations issued pursuant to this subchapter, and the permit, including,
 5 but not limited to, proper closure of the ~~site or~~ facility. Liability under
 6 the bond shall be for the duration of the disposal operation and for that
 7 period required to properly close ~~and revegetate the site~~ facility, and for
 8 post-closure care, in accordance with the regulations issued by the
 9 commission."

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 11 SECTION 2. Arkansas Code 8-6-1602 is amended to read as follows:

12 "8-6-1602. Definitions.

13 As used in this subchapter:

14 (1) 'Active Life' means the period of operation beginning with the
 15 initial receipt of solid waste and ending at completion of closure activities;

16 (2) 'Active portion' means that part of a facility or unit that has
 17 received or is receiving wastes and that has not been closed;

18 (3) 'Commission' means the ~~Commission on Pollution Control and Ecology~~
 19 ~~of the State of Arkansas~~ Arkansas Pollution Control and Ecology Commission;

20 (4) 'Closure plan' means a written plan that describes the steps
 21 necessary to close ~~all landfill units~~ any solid waste management facility at
 22 any point during ~~their~~ its active ~~lives~~ life in accordance with the ~~cover~~
 23 design requirements in rules and regulations issued pursuant to this
 24 subchapter, as applicable;

25 (5) 'Department' means the ~~Department of Pollution Control and Ecology~~
 26 ~~of the State of Arkansas~~ Arkansas Department of Environmental Quality;

27 (6) 'Disposal site' or 'disposal facility' means any place at which
 28 solid waste is dumped, abandoned, or accepted or disposed of for final
 29 disposition by incineration, landfilling, composting, or any other method;

30 (7)(A) 'Existing municipal solid waste landfill unit' means any
 31 municipal solid waste landfill unit that was receiving solid waste as of
 32 October 9, 1993, or April 9, 1994, as applicable to the Resource Conservation
 33 and Recovery Act, Subtitle D.

34 (B) Waste placement in existing units must be consistent with
 35 past operating practices or modified practices to ensure good management;

36 (8) 'Facility' means all contiguous land and structures, other

1 appurtenances, and improvements on the land used for the disposal, treatment
 2 or processing of solid waste;

3 ~~(8)~~(9) 'Land application unit' means an area where wastes are applied
 4 onto or incorporated into the soil surface, excluding manure and wastewater
 5 treatment sludge spreading operations, for agricultural purposes or for
 6 treatment and disposal;

7 ~~(9)~~—(10) 'Lateral expansion' means a horizontal expansion of the waste
 8 boundaries of an existing municipal solid waste landfill unit;

9 ~~(10)~~ (11)(A) 'Municipal solid waste landfill unit' means a ~~distinct~~
 10 discrete area of land or an excavation that receives household waste, and that
 11 is not a land application unit, surface impoundment, injection well, or waste
 12 pile.

13 (B) A municipal solid waste landfill unit also may receive other
 14 types of Resource Conservation and Recovery Act, Subtitle D wastes, such as
 15 commercial solid waste, nonhazardous sludge, small quantity generator waste,
 16 and industrial solid waste.

17 (C) Such a landfill may be publicly or privately owned.

18 (D) A municipal solid waste landfill unit may be a new municipal
 19 solid waste landfill unit, an existing municipal solid waste landfill unit, or
 20 a lateral expansion;

21 ~~(11)~~ (12) 'New municipal solid waste landfill unit' means any municipal
 22 solid waste landfill unit that has not received waste prior to October 9,
 23 1993, or April 9, 1994, as applicable;

24 ~~(12)~~ (13) 'Operator' means the person responsible for the overall
 25 operation of a facility or part of a facility;

26 ~~(13)~~ (14) 'Owner' means the person who owns a facility or part of a
 27 facility;

28 ~~(14)~~ (15) 'Person' means any individual, corporation, company, firm,
 29 partnership, association, trust, state agency, government instrumentality or
 30 agency, institution, county, city, town or municipal authority or trust,
 31 venture, or other legal entity, however organized;

32 ~~(15)~~(16) 'Post-closure plan' means a written plan that provides a
 33 description of monitoring and maintenance activities required in rules and
 34 regulations issued pursuant to this subchapter and includes the frequency with
 35 which these activities will be performed;

36 ~~(16)~~ (17) 'RCRA, Subtitle D' means the United States Environmental

1 Protection Agency, Office of Solid Waste, Resource Conservation and Recovery
 2 Act, and the August 1991 Addendum for the Final Criteria for Municipal Solid
 3 Waste Landfills (40 CFR part 258);

4 ~~(17)~~ (18) 'Solid waste management system' means the entire process of
 5 storage, collection, transportation, processing, treatment, and disposal of
 6 solid waste, and includes equipment, facilities, and operations designed for
 7 solid waste management activities, including recycling, source reduction, and
 8 the enforcement of solid waste management laws and ordinances;

9 ~~(18)~~ (19) 'State' means the State of Arkansas; and

10 ~~(19)~~ (20)(A) 'Surface impoundment' or 'impoundment' means a facility or
 11 part of a facility that is a natural topographic depression, human-made
 12 excavation, or diked area formed primarily of earthen materials, although it
 13 may be lined with human-made materials, that is designed to hold an
 14 accumulation of liquid wastes or wastes containing free liquids and that is
 15 not an injection well.

16 (B) Examples of surface impoundments are holding storage,
 17 settling, and aeration pits, ponds, and lagoons."

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 19 SECTION 3. Arkansas Code 8-6-1603 is amended to read as follows:
 20 "8-6-1603. Procedures generally.

21 (a)(1) Financial Assurance For Closure. The owner or operator must have
 22 a detailed written estimate, in current dollars, of the cost of hiring a third
 23 party to close the largest area of the ~~disposal site or facility unit~~
 24 requiring a ~~final cover~~ closure as required under the regulations issued
 25 pursuant to this subchapter and the permit during the active life in
 26 accordance with the closure plan.

27 (2) The cost estimate shall equal the cost of closing the largest
 28 area of ~~all~~ any solid waste management facility disposal units requiring a
 29 ~~final cover~~ closure at any time during the active life when the extent and
 30 manner of its operation would make closure the most expensive, as indicated by
 31 its closure plan.

32 (3) During the active life of the solid waste ~~disposal management~~
 33 facility, the owner or operator shall annually adjust the closure cost
 34 estimate for inflation.

35 (4)(A) The owner or operator shall establish financial assurance
 36 for closure of ~~the~~ any permitted ~~municipal solid waste landfills,~~ solid waste

1 management ~~systems, or solid waste disposal facilities~~ facility in compliance
2 with the regulations issued pursuant to this subchapter and the permit.

3 (B) The owner or operator of ~~each~~ any solid waste ~~disposal-~~
4 management facility shall provide continuous financial assurance coverage for
5 closure until released from financial assurance requirements by demonstrating
6 compliance with regulations issued pursuant to this subchapter and the permit.

7 (C) The amount of financial assurance shall be in
8 accordance with § 8-6-1002(e) and the regulations issued thereunder.

9 (b)(1) Financial Assurance For Post-Closure Care. The owner or operator
10 shall have a detailed written estimate, in current dollars, of the cost of
11 hiring a third party to conduct post-closure care in compliance with the
12 post-closure plan developed under the regulations issued pursuant to this
13 subchapter and the permit.

14 (2) The cost estimate for post-closure care shall be based on the
15 most expensive costs of post-closure care during the post-closure care period.

16 (3) During the active life of the solid waste ~~disposal~~ management
17 facility and during the post-closure care period, the owner or operator shall
18 annually adjust the post-closure cost estimate for inflation.

19 (4)(A) The owner or operator shall establish financial assurance
20 for costs of post-closure care of ~~the~~ any permitted ~~municipal solid waste~~
21 ~~landfills,~~ solid waste management ~~systems,~~ or solid waste ~~disposal facilities~~
22 facility in compliance with regulations issued pursuant to this subchapter and
23 the permit.

24 (B) The owner or operator of ~~each~~ any solid waste ~~disposal-~~
25 management facility shall provide continuous financial assurance coverage for
26 post-closure care until released from financial assurance requirements for
27 post-closure care by demonstrating compliance with regulations issued pursuant
28 to this subchapter and the permit.

29 (c)(1) Financial Assurance For Corrective Action. The owner or
30 operator, if required to undertake a corrective action program under
31 regulations issued pursuant to this subchapter, shall have a detailed written
32 estimate, in current dollars, of the cost of hiring a third party to perform
33 the corrective action in accordance with regulations issued pursuant to this
34 subchapter.

35 (2)(A) The owner or operator of ~~each~~ any ~~municipal solid waste~~
36 ~~landfill,~~ solid waste management ~~system,~~ or solid waste ~~disposal~~ facility

1 shall establish financial assurance for the most recent corrective action
2 program.

3 (B) The owner or operator shall provide continuous coverage
4 for corrective action until released from financial assurance requirements for
5 corrective action by demonstrating compliance with regulations issued pursuant
6 to this subchapter.

7 (d)(1) ALLOWABLE MECHANISMS. The mechanisms used to demonstrate
8 financial assurance under this section shall ensure that the funds necessary
9 to meet the costs of closure, post-closure care, and corrective action for
10 known releases will be available whenever they are needed.

11 (2) The financial mechanisms shall be legally valid, binding, and
12 enforceable under state and federal law.

13 (3) Owners and operators shall choose from the options specified
14 in regulations issued pursuant to this subchapter.

15 (4)(A) A municipality or county that owns or operates a solid
16 waste management facility receiving any non-RCRA Subtitle D waste may, in lieu
17 of a performance bond, execute a contract of obligation with the Director of
18 the ~~Department of Pollution Control and Ecology~~ Department of Environmental
19 Quality.

20 (B) The contract of obligation shall be a binding agreement
21 on the municipality or county, allowing the director or his designee to
22 collect any general revenues being disbursed or to be disbursed from the state
23 to the municipality or county on the failure of the municipality or county to
24 fulfill the financial assurance requirements of this subchapter and
25 regulations issued pursuant thereto.

26 (C) To assure that adequate funds, necessary to meet the
27 estimated costs for closure and post-closure care of any non-RCRA Subtitle D
28 solid waste management facility, are available whenever they are needed, the
29 estimated annual general revenue amount pledged under a contract of obligation
30 shall be at least equal to, but not less than, the estimated annual cost for
31 closure and post- closure care to satisfy the financial assurance requirements
32 for closure and post-closure care of the subchapter."

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34 SECTION 4. All provisions of this act of a general and permanent nature
35 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
36 Revision Commission shall incorporate the same in the Code.

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SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 6. All laws and parts of laws in conflict with this act are hereby repealed.

APPROVED: 3/22/1999