

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Representative Flanagin**

# A Bill

**HOUSE BILL**

## For An Act To Be Entitled

8 "AN ACT RELATING TO THE DISPOSAL OF CHEMICAL AGENTS; AND  
9 FOR OTHER PURPOSES.

## Subtitle

12 "AN ACT RELATING TO THE DISPOSAL OF CHEMICAL AGENTS."

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

16 SECTION 1. The compounds listed in this act were designed and  
17 configured to be utilized for warfare, with the purpose of incapacitating or  
18 inducing lethality in persons who come in contact with the compounds, and the  
19 compounds have no legitimate civilian use.

20 The State of Arkansas owes to its residents a duty of utmost care to  
21 assure that no person will be exposed to these compounds or the degradation  
22 by-products of these compounds through purposeful or accidental release of the  
23 compounds into the air, land, or water of the State, and also owes a duty to  
24 utilize the police powers of the State to guarantee the safe demilitarization,  
25 decommissioning, dismantling, and disposal of weapons containing these  
26 compounds and to eliminate potential risks of exposure from the treatment and  
27 disposal of the compounds.

28 Section 6929 of Title 42 of the United States Code, specifically  
29 recognizes and reserves to the State the authority to impose reasonable  
30 restrictions directly relating to public health and safety with respect to the  
31 management of hazardous wastes beyond the minimum standards established under  
32 federal law.

33 There exists substantial gaps in information concerning the acute and  
34 chronic health effects and environmental consequences of exposure to the  
35 compounds and the degradation by-products of the compounds listed in this act,

1 which, given the high acute toxicity of the compounds relative to other  
2 regulated hazardous wastes, justify the imposition of standards correlative to  
3 the uncertainties and severity of risks potentially posed by the treatment or  
4 disposal of the compounds.

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6 SECTION 2. Notwithstanding any law to the contrary, within thirty (30)  
7 days after the effective date of this act, the Department of Pollution Control  
8 and Ecology shall list the following substances as hazardous wastes for the  
9 purposes of regulation of the treatment, storage, and disposal of the wastes  
10 under the delegated authority of the Resource Conservation and Recovery Act,  
11 42 U.S.C. 6901, et seq.: GB (isopropyl methylphosphonoflouridate); VX (O-  
12 ethyl-S-(2-diisopropylaminoethyl) methylphosphonothiolate); and H (bis(2-  
13 chloroethyl) sulfide) and related compounds.

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15 SECTION 3. The Department of Pollution Control and Ecology shall  
16 consider the criteria set forth in this act in making a determination to  
17 issue, deny or condition a permit for any person desiring a permit to  
18 construct or operate a hazardous-waste site or facility for treatment, storage  
19 or disposal of any of the substances identified in this act. The applicant  
20 shall affirmatively demonstrate, and the Department of Pollution Control and  
21 Ecology shall find prior to issuance, conditional issuance or denial of the  
22 permit, that:

23 (1) The proposed treatment or destruction technology has been fully  
24 proven in an operational facility of scale, configuration, and throughput  
25 comparable to the proposed facility, for a period of time sufficient to  
26 provide consistent assurance of destruction or neutralization at an efficiency  
27 of ninety-nine and nine thousand, and nine hundred, and ninety-nine ten  
28 thousandths percent (99.9999%) for each substance proposed to be treated or  
29 destroyed, with the efficiency to be demonstrated as achievable during the  
30 design life of the facility under all operating conditions including during  
31 the occurrence of malfunctions, upsets, or unplanned shutdowns;

32 (2) Monitoring data from an operational facility as described in this  
33 act reflects the absence of emissions from treatment and destruction  
34 facilities or fugitive sources, including but not limited to the substances  
35 identified in this act and products of combustion and incomplete combustion,

1 which alone or in combination present any risk of acute or chronic human  
2 health effect, as demonstrated by sufficient and applicable toxicological  
3 data, or adverse environmental effect;

4 (3) A plan has been submitted to the Department of Pollution Control  
5 and Ecology and approved, providing for development and funding of sufficient  
6 training, coordination, and equipment for state and local emergency response  
7 personnel, including the health, police, fire, and emergency response fields,  
8 to assure the ability of the community to respond to releases from such a  
9 facility, including development and funding of an emergency response plan by  
10 the applicant which demonstrates the capability of evacuating prior to  
11 exposure all individuals that might be exposed to releases from the facility  
12 during a credible worst-case release. In determining the population and area  
13 of potential exposure during a worst-case release, all possible climatic  
14 conditions and population distributions shall be assumed for the largest area  
15 where any exposure to the release could induce acute or chronic health  
16 consequences or environmental impact. The plan shall be developed and  
17 submitted for approval by the applicant, and no technical review of a permit  
18 shall proceed unless the plan has first been approved, after public notice and  
19 an opportunity to be heard concerning the plan;

20 (4) In considering any application for a permit and supporting  
21 information which shall be provided by the applicant on request by the  
22 Department of Pollution Control and Ecology, the Department shall not issue a  
23 permit unless the Department makes an affirmative finding after public notice  
24 and an opportunity to be heard, that:

25 (a) No alternative method of treatment or disposal, including,  
26 but not limited to, neutralization and transportation to a less-populated  
27 disposal site, exists that creates less risk of release or harm to the public  
28 or the environment in the event of release;

29 (b) No alternative method of treatment or destruction, including,  
30 but not limited to, neutralization and transportation to a less-populated  
31 disposal site, is likely to exist or could be developed which would pose less  
32 risk of release or harm to the public or environment in the event of release,  
33 before the time that the decomposition of the compounds or the containers or  
34 munitions housing the compounds, necessitates destruction of the compounds due  
35 to serious risk of imminent and substantial release of the compounds due to

1 instability or container degradation. In considering alternatives to the  
2 proposed activity, the Department of Pollution Control and Ecology shall  
3 affirmatively consider all reasonable alternatives, including alternatives  
4 that could be developed, and shall issue a permit only where it finds by clear  
5 and convincing evidence that no alternative treatment or disposal option,  
6 including transportation, exists or could be developed that would provide  
7 greater protection against exposure or harm to the public or environment.

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9         SECTION 4. The term "treatment", as used in this act, shall have the  
10 same meaning as prescribed in Arkansas Code §8-7-203(12) and shall also  
11 include the manual or mechanical handling of the chemical compounds listed in  
12 this act and of any munitions containing the compounds; and the processing of  
13 munitions to remove the compounds, to separate compound components, and to  
14 otherwise prepare the components and compounds for destruction,  
15 neutralization, transportation, dismantling, or decommissioning.

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17         SECTION 5. All provisions of this act of a general and permanent nature  
18 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
19 Revision Commission shall incorporate the same in the Code.

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21         SECTION 6. If any provision of this act or the application thereof to  
22 any person or circumstance is held invalid, such invalidity shall not affect  
23 other provisions or applications of the act which can be given effect without  
24 the invalid provision or application, and to this end the provisions of this  
25 act are declared to be severable.

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27         SECTION 7. All laws and parts of laws in conflict with this act are  
28 hereby repealed.

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