

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representatives Walker, Brown and Townsend**

A Bill

HOUSE BILL 1986

For An Act To Be Entitled

8 "AN ACT TO PROVIDE FOR ENVIRONMENTAL EQUITY IN SITING
9 HIGH-IMPACT SOLID WASTE MANAGEMENT FACILITIES BY CREATING
10 A REBUTTABLE PRESUMPTION AGAINST PERMITTING THE
11 CONSTRUCTION OR OPERATION OF ANY SUCH FACILITY WITHIN
12 *TWELVE (12) MILES* OF ANY EXISTING HIGH-IMPACT SOLID WASTE
13 MANAGEMENT FACILITY; TO REPEAL AND SUPERSEDE A.C.A.
14 8-6-218; AND FOR OTHER PURPOSES."

Subtitle

17 "AN ACT TO PROVIDE FOR ENVIRONMENTAL EQUITY IN SITING
18 HIGH-IMPACT SOLID WASTE MANAGEMENT FACILITIES."

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

22 SECTION 1. Legislative Intent.

23 (a) Through extensive legislation since 1989, the state has made
24 significant strides toward a comprehensive and regionalized approach to solid
25 waste management. The General Assembly recognizes the need to develop viable
26 facilities for managing and disposing of the state_s solid waste. This act
27 should be construed as a complement to the state_s overall regionalization
28 strategy by encouraging an equitable and efficient dispersal of solid waste
29 management facilities to serve the needs of all citizens.

30 (b) The General Assembly also acknowledges that, while solid waste
31 management facilities are essential, certain types of facilities impose
32 specific burdens on the host community. National trends indicate a tendency
33 to concentrate high-impact solid waste disposal facilities in lower-income or
34 minority communities. Such facilities may place an onus on the host community
35 without any reciprocal benefits to local residents. The purpose of this act

1 is to prevent communities from becoming the involuntary hosts to a
2 proliferation of high-impact solid waste management facilities.

3

4 SECTION 2. Definitions.

5 The following definitions shall apply for the purposes of this act:

6 (1) (a) "High-impact solid waste management facility" shall mean,
7 excluding the facilities described in subsection (1) (b), any solid waste
8 landfill, any solid or *commercial* hazardous waste incinerator, and any
9 *commercial* hazardous waste treatment, storage or disposal facility.

10 (b) The term "high-impact solid waste management facility" shall
11 not include the following:

12 (i) Recycling or composting facilities;

13 (ii) Waste tire management sites;

14 (iii) Solid waste transfer stations;

15 (iv) *Solid waste landfills which have applications pending*
16 *for either increased or new acreage or provisions for additional services or*
17 *increased capacity;*

18 (v) *A facility dedicated solely to the treatment, storage*
19 *or disposal of solid or hazardous wastes generated by a private industry where*
20 *the private industry bears the expense of operating and maintaining the*
21 *facility solely for the disposal of waste generated by the industry or wastes*
22 *of a similar kind or character; or*

23 (vi) *A facility or activity dedicated solely to a response*
24 *action at a location listed by the state or federal government as a hazardous*
25 *substance site; or*

26 (vii) *An existing facility operating under interim status*
27 *of the Federal Resource Conservation and Recovery Act or implementing*
28 *regulations of the Arkansas Hazardous Waste Management Act or the Arkansas*
29 *Hazardous Waste Management Code.*

30 (viii) *Expansion of existing Resource Conservation and*
31 *Recovery Act or Arkansas Hazardous Waste Management Act hazardous waste*
32 *facilities, either through increased acreage or provision for additional*
33 *services or increased capacity.*

34 (2) "Permitting" means any governmental authorization to proceed with
35 construction or operation of a facility or activity required by either state

1 law or local ordinance.

2 (3) "Host community" means all governmental units possessing zoning
3 authority encompassed within a *twelve (12)* mile radius of the site of a
4 proposed high-impact solid waste management facility.

5 (4) "Solid waste" has the same meaning as set out in Arkansas Code 8-6-
6 702 (12), provided however that this definition does not include "hazardous
7 waste" as defined in subsection (5).

8 (5) "Hazardous waste" has the same meaning as set out in Arkansas Code
9 8-7-203 (6).

10 (6) "Hazardous substance sites" has the same meaning as set out in
11 Arkansas Code 8-7-503 (12).

12

13 SECTION 3. (a) There shall be a rebuttable presumption against
14 permitting the construction or operation of any high-impact solid waste
15 management facility as defined in this act within *twelve (12)* miles of any
16 existing high-impact solid waste management facility. This presumption shall
17 be honored by the Department of Pollution Control and Ecology, the regional or
18 service area solid waste planning board with jurisdiction over the site, and
19 any other governmental entity with permitting or zoning authority concerning
20 any facility.

21 (b) The subsection (a) presumption can be rebutted if any of the
22 following is shown:

23 (1) No other suitable site for such a facility is available
24 within the region or service area because of the restraints of geology or any
25 other factors listed ar Arkansas Code 8-6-706(b)(2); or

26 (2) Incentives have prompted the host community to accept the
27 siting of the facility. Such incentives may include, without limitation:

28 (A) Increased employment opportunities;

29 (B) Reasonable host fees *not to exceed the prevailing state*
30 *average*;

31 (C) Contributions by the facility to the community
32 infrastructure (e.g. road maintenance, park development, litter control);

33 (D) Compensation to *adjacent* individual landowners for any
34 assessed decrease in property values; or

35 (E) Subsidization of community services.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

SECTION 4. Department_s Permitting Authority.

The department shall not process any application for a permit subject to Section 3 until the affected local and regional authorities have issued definitive findings regarding the criteria set out in Section 3.

SECTION 5. Specific Repealer.

This act repeals and supersedes the provisions of Arkansas Code 8-6-218.

SECTION 6. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 7. 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 8. All laws and parts of laws in conflict with this act are hereby repealed.

/s/Rep. Walker, et al

As Engrossed: 4/8/93

HB 1986

1

2

3

mih334