

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**

A Bill

ACT 510 OF 1995
SENATE BILL 430

4 **By: Committee on Public Health, Welfare, and Labor**

5

6

7

For An Act To Be Entitled

8 "AN ACT TO AMEND CHAPTER 6 OF TITLE 8 OF THE ARKANSAS CODE
9 TO CREATE A SUBCHAPTER ESTABLISHING FINANCIAL ASSURANCE
10 REQUIREMENTS AND ALLOWABLE INSTRUMENTS FOR SOLID WASTE
11 FACILITIES; AND FOR OTHER PURPOSES."

12

13

Subtitle

14

15

16

17

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

19

20 SECTION 1. Chapter 6 of Title 8 of the Arkansas Code is amended by
21 adding the following new subchapter:

22

"8-6-1601. Purpose.

23

24

25

26

27

28

29

30

31

32

33

34

35

36

The purpose of this subchapter is to establish the procedure for posting financial assurance for permitted municipal solid waste landfills, solid waste management systems, or solid waste disposal facilities. The procedure for issuance of permits for solid waste management systems and for solid waste management disposal sites and facilities shall be as provided in the rules and regulations adopted by the commission under this subchapter or as otherwise provided by law. After an application to operate a disposal site or facility has been reviewed and approved, but before a permit is issued, the applicant shall post with the Department of Pollution Control and Ecology, on forms prescribed by the department in accordance with the regulations issued under this subchapter, a corporate surety bond for performance or an acceptable alternative, such as a certificate of deposit or letter of credit, payable to the department and conditional upon faithful performance of all requirements of this subchapter, the regulations issued pursuant to this subchapter, and

1 the permit, including, but not limited to, proper closure of the site or
2 facility. Liability under the bond shall be for the duration of the disposal
3 operation and for that period required to properly close and revegetate the
4 site, and for post-closure care, in accordance with the regulations issued by
5 the commission.

6 8-6-1602. Definitions.

7 As used in this subchapter:

- 8 (1) Active life means the period of operation beginning with the
9 initial receipt of solid waste and ending at completion of closure activities;
- 10 (2) Active portion means that part of a facility or unit that has
11 received or is receiving wastes and that has not been closed;
- 12 (3) Commission means the Commission on Pollution Control and Ecology
13 of the State of Arkansas;
- 14 (4) Closure plan means a written plan that describes the steps
15 necessary to close all landfill units at any point during its active life in
16 accordance with the cover design requirements in rules and regulations issued
17 pursuant to this subchapter, as applicable;
- 18 (5) Department means the Department of Pollution Control and Ecology
19 of the State of Arkansas;
- 20 (6) Disposal site or Disposal facility means any place at which
21 solid waste is dumped, abandoned, or accepted or disposed of for final
22 disposition by incineration, landfilling, composting or any other method;
- 23 (7) Existing Municipal Solid Waste Landfill Unit means any municipal
24 solid waste landfill unit that was receiving solid waste as of October 9,
25 1993, or April 9, 1994, as applicable to the Resource Conservation and
26 Recovery Act, Subtitle D. Waste placement in existing units must be
27 consistent with past operating practices or modified practices to ensure good
28 management;
- 29 (8) Land application unit means an area where wastes are applied
30 onto or incorporated into the soil surface (excluding manure and wastewater
31 treatment sludge spreading operations) for agricultural purposes or for
32 treatment and disposal;
- 33 (9) Lateral expansion means a horizontal expansion of the waste
34 boundaries of an existing municipal solid waste landfill unit;
- 35 (10) Municipal solid waste landfill unit means a distinct area of

1 land or an excavation that receives household waste, and that is not a land
2 application unit, surface impoundment, injection well, or waste pile. A
3 municipal solid waste landfill unit also may receive other types of Resource
4 Conservation and Recovery Act, Subtitle D wastes, such as commercial solid
5 waste, nonhazardous sludge, small quantity generator waste and industrial
6 solid waste. Such a landfill may be publicly or privately owned. A municipal
7 solid waste landfill unit may be a new municipal solid waste landfill unit, an
8 existing municipal solid waste landfill unit or a lateral expansion;

9 (11) New municipal solid waste landfill unit means any municipal
10 solid waste landfill unit that has not received waste prior to October 9,
11 1993, or April 9, 1994, as applicable;

12 (12) Operator means the person(s) responsible for the overall
13 operation of a facility or part of a facility;

14 (13) Owner means the person(s) who owns a facility or part of a
15 facility;

16 (14) Person means any individual, corporation, company, firm,
17 partnership, association, trust, state agency, government instrumentality or
18 agency, institution, county, city, town or municipal authority or trust,
19 venture or other legal entity, however organized;

20 (15) Post-closure plan means a written plan that provides a
21 description of monitoring and maintenance activities required in rules and
22 regulations issued pursuant to this subchapter and includes the frequency at
23 which these activities will be performed;

24 (16) RCRA means the Resource Conservation and Recovery Act;

25 (17) Solid waste management system means the entire process of
26 storage, collection, transportation, processing, treatment, and disposal of
27 solid waste, and includes equipment, facilities and operations designed for
28 solid waste management activities, including recycling, source reduction, and
29 the enforcement of solid waste management laws and ordinances;

30 (18) State means the State of Arkansas; and

31 (19) Surface impoundment or Impoundment means a facility or part
32 of a facility that is a natural topographic depression, human-made excavation,
33 or diked area formed primarily of earthen materials (although it may be lined
34 with human-made materials), that is designed to hold an accumulation of liquid
35 wastes or wastes containing free liquids and that is not an injection well.

1 Examples of surface impoundments are holding storage, settling, and aeration
2 pits, ponds, and lagoons.

3 8-6-1603. Procedures generally.

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

10 (2) The cost estimate shall equal the cost of closing the
11 largest area of all solid waste disposal units requiring a final cover at any
12 time during the active life when the extent and manner of its operation would
13 make closure the most expensive, as indicated by its closure plan.

14 (3) During the active life of the solid waste disposal facility,
15 the owner or operator shall annually adjust the closure cost estimate for
16 inflation.

17 (4) The owner or operator shall establish financial assurance
18 for closure of the permitted municipal solid waste landfill, solid waste
19 management systems, or solid waste disposal facilities in compliance with the
20 regulations issued pursuant to this subchapter and the permit. The owner or
21 operator of each solid waste disposal facility shall provide continuous
22 financial assurance coverage for closure until released from financial
23 assurance requirements by demonstrating compliance with regulations issued
24 pursuant to this subchapter and the permit.

25 (b) (1) Financial Assurance for Post-closure Care. The owner or
26 operator shall have a detailed written estimate, in current dollars, of the
27 cost of hiring a third party to conduct post-closure care in compliance with
28 the post-closure plan developed under the regulations issued pursuant to this
29 subchapter and the permit.

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

33 (3) During the active life of the solid waste disposal facility
34 and during the post-closure care period, the owner or operator shall annually
35 adjust the post-closure cost estimate for inflation.

1 (4) The owner or operator shall establish financial assurance
2 for costs of post-closure care of the permitted municipal solid waste
3 landfills, solid waste management systems, or solid waste disposal facilities
4 in compliance with regulations issued pursuant to this subchapter and the
5 permit. The owner or operator of each solid waste disposal facility shall
6 provide continuous financial assurance coverage for post-closure care until
7 released from financial assurance requirements for post-closure care by
8 demonstrating compliance with regulations issued pursuant to this subchapter
9 and the permit.

10 (c) (1) Financial Assurance for Corrective Action. The owner or
11 operator, if required to undertake a corrective action program under
12 regulations issued pursuant to this subchapter, shall have a detailed written
13 estimate, in current dollars, of the cost of hiring a third party to perform
14 the corrective action in accordance with regulations issued pursuant to this
15 subchapter.

16 (2) The owner or operator of each municipal solid waste
17 landfill, solid waste management system or solid waste disposal facility shall
18 establish financial assurance for the most recent corrective action program.
19 The owner or operator shall provide continuous coverage for corrective action
20 until released from financial assurance requirements for corrective action by
21 demonstrating compliance with regulations issued pursuant to this subchapter.

22 (d) Allowable Mechanisms. The mechanisms used to demonstrate
23 financial assurance under this section shall ensure that the funds necessary
24 to meet the costs of closure, post-closure care, and corrective action for
25 known releases will be available whenever they are needed. The financial
26 mechanisms shall be legally valid, binding, and enforceable under State and
27 Federal Law. Owners and operators shall choose from the options specified in
28 regulations issued pursuant to this subchapter. A municipality or county may,
29 in lieu of a performance bond, execute a contract of obligation with the
30 Director of the Department of Pollution Control and Ecology. The contract of
31 obligation shall be a binding agreement on the municipality or county,
32 allowing the director or his designee to collect any general revenues being
33 disbursed or to be disbursed from the state to the municipality or county on
34 failure of the municipality or county to fulfill the financial assurance
35 requirements of this subchapter and regulations issued pursuant thereto.

1 8-6-1604. Solid Waste Performance Bond Fund.

2 A Solid Waste Performance Bond Fund is hereby established on the books
3 of the Treasurer of the State, Auditor of State, and Chief Fiscal Officer of
4 the State. In addition to any monies appropriated by the General Assembly to
5 the fund, there shall be deposited in the fund all forfeitures collected under
6 this subchapter, federal government monies designated to enter the fund, any
7 monies received by the state as a gift or donation to the fund, and all
8 interest earned upon monies deposited in the fund. The fund shall be
9 administered by the department and will be used to accomplish remedial action,
10 including closure of lands covered by performance bonds forfeited under this
11 subchapter. No more than four percent (4%) of the monies received annually
12 into the fund shall be used by the department for the administration of
13 remedial actions performed as a result of this subchapter."
14

15 SECTION 2. All provisions of this act of a general and permanent nature
16 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
17 Revision Commission shall incorporate the same in the Code.
18

19 SECTION 3. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.
24

25 SECTION 4. All laws and parts of laws in conflict with this act are
26 hereby repealed.
27

28 SECTION 5. EMERGENCY. It is hereby found and determined by the General
29 Assembly that this statute is needed in order to make state requirements
30 compatible with federal regulations. Therefore, an emergency is declared to
31 exist, and this act being immediately necessary for the preservation of the
32 public peace, health, and safety, shall be in full force and effect from and
33 after its passage and approval.
34
35

APPROVED: 3-2-95

1
2
3
4