

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4

As Engrossed: S3/13/97

A Bill

ACT 938 OF 1997
SENATE BILL 643

5 *By: Senators Ross, Hill, Brown, Roebuck, Walker, and Boozman*
6 *By: Representatives Goodwin, Hogue, Kidd, Teague, Wooldridge, Rorie, Luker, Baker, Harris, and Simmons*
7

For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED TITLE 8, CHAPTER
10 6, SUBCHAPTER 5, AND ARKANSAS CODE ANNOTATED § 8-6-1002(a)
11 REGARDING THE ILLEGAL DUMPS CONTROL ACT AND THE LANDFILL
12 POST-CLOSURE TRUST FUND; AND FOR OTHER PURPOSES."
13

Subtitle

14 "REGARDING THE ILLEGAL DUMPS CONTROL ACT
15 AND THE LANDFILL POST-CLOSURE TRUST
16 FUND."
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18

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

21 SECTION 1. Subchapter 5 of Chapter 6, Title 8, of the Arkansas Code
22 Annotated is amended to read as follows:

23 "8-6-501. Title.

24 This subchapter shall be known and may be cited as the ~~"Illegal Dumps~~
25 ~~Control Act". Illegal Dump Eradication and Corrective Action Program Act.~~

26 8-6-502. Purpose.

27 It is the purpose of this subchapter to set forth the policy of the
28 state to eliminate the illegal dumping of solid waste and to provide a means
29 of funding the program. This subchapter defines illegal dumps and establishes
30 elimination proceedings and provides a mechanism for funding.

31 8-6-503. Definitions.

32 As used in this subchapter, unless the context otherwise requires:

33 (1) Commission means the Arkansas Pollution Control and Ecology
34 Commission;

35 (2) Department means the Department of Pollution Control and Ecology;

36 (3) Director means the Director of the Department of Pollution Control

1 and Ecology;

2 (4) Illegal dump means any place at which solid waste is placed,
3 deposited, abandoned, dumped, or otherwise disposed of in a manner that is
4 prohibited by this subchapter or other statutes, rules, or regulations, and
5 which constitute one (1) of and/or any of the following:

6 (A) Attractive nuisance;

7 (B) Fire, health, or safety hazard;

8 (C) Potential sources of surface and/or groundwater
9 contamination; or

10 (D) Other contamination that is hazardous to the public health or
11 endangers the environment;

12 (5) Illegal dumping of solid waste means the illegal placing,
13 depositing, dumping, or causing to be placed, deposited, or dumped, by any
14 person any solid waste that is prohibited by this chapter:

15 (A) In or upon any public or private highway or road, including
16 any portion of the right-of-way thereof;

17 (B) In or upon any private property into or upon which the public
18 is admitted by easement or license, or any private property;

19 (C) In or upon any public park or other public property, other
20 than the property designated or set aside for such purpose by the governing
21 board or body having charge thereof; or

22 (D) Upon any property for which a permit has not been issued by
23 the department;

24 (6) Landfill means all landfills permitted under the Arkansas Solid
25 Waste Management Act, § 8-6-201 et seq., except those landfills where a
26 private industry bears the expense of operating and maintaining the landfill
27 solely for the disposal of wastes generated by the industry or wastes of a
28 similar kind or character;

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

33 (8) Solid waste means any garbage or refuse, sludge from a wastewater
34 treatment plant, water supply treatment plant, or air pollution control
35 facility, and other discarded material, including solid, liquid, semisolid, or
36 contained gaseous material resulting from industrial, commercial, mining, and

1 agricultural operations and from community activities, but does not include
2 solid or dissolved materials in domestic sewage, or solid or dissolved
3 materials in irrigation return flows or industrial discharges that are point
4 sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear,
5 or by-product material as defined by the Atomic Energy Act of 1954, as amended
6 (68 Stat. 923).

7 8-6-504. Illegal Dump Eradication and Corrective Action Program.

8 (a)(1) Effective July 1, 1997, and annually thereafter, and in
9 accordance with provisions set forth in Arkansas Code Annotated § 8-6-1001, et
10 seq., the department shall ensure that an apportionment, not to exceed one
11 million dollars (\$1,000,000) per fiscal year, of the Landfill Post-Closure
12 Trust Fund shall be allocated from the moneys deposited in the Landfill Post
13 Closure Trust Fund to be utilized by the department to administer and enforce
14 the Illegal Dump Eradication and Corrective Action Program, pursuant to the
15 provisions of this subchapter.

16 (2) The Illegal Dump Eradication and Corrective Action Program shall
17 be administered by the department. The moneys earmarked for the Illegal Dump
18 Eradication and Corrective Action Program shall be used by the department to
19 fund specific abatement projects or clean-up actions and activities, and
20 shall also be used by the department for administrative activities, which
21 shall include, but not be limited to, illegal dumping and dumps education,
22 enforcement actions and the administration of the Illegal Dump Eradication
23 Corrective Action Program, pursuant to this subchapter.

24 (b) The allocation of funding shall be used if the director determines
25 that the illegal dump owner or operator cannot be located or the director
26 determines an emergency exists necessitating immediate corrective action.

27 (c) The allocation of funding shall not be used to compensate third
28 parties for damages to property caused by the contamination for the illegal
29 dumping of solid waste.

30 (d) The apportionment authorized by this subsection shall terminate five
31 (5) years from the effective date of this act, and that the Illegal Dump
32 Eradication and Corrective Action Program shall receive no fund from the
33 Landfill Post-Closure Trust Fund beyond that date.

34 ~~8-6-504~~ 8-6-505. Proceedings generally.

35 (a) Any government official or employee or any person who has knowledge
36 of, or information of, the illegal dumping of solid waste on any public or

1 private property in this state may file a complaint thereof in the county
2 court of the county in which the illegal dumping of solid waste has taken
3 place or in the county of residence of the person who is accused of being
4 liable for the illegal dumping of the solid waste.

5 (b)(1) Upon the filing of a verified complaint, noting on the complaint
6 the person against whom the claim is filed, the county court shall enter a
7 temporary order directing that the accused person remove from the described
8 public or private property the solid waste that has been illegally dumped on
9 the property and properly dispose of the solid waste within ten (10) days from
10 the date of the order.

11 (2) The sheriff of the county shall serve the order.

12 (3) Upon the order being served, the accused party shall remove the
13 solid waste in question from the public or private property as described in
14 the order.

15 (4) If the person wishes to challenge the order, the person may file
16 a petition challenging the order with the court within ten (10) days from the
17 date the order is served.

18 (c)(1) Upon the filing of a petition challenging the order, the court
19 shall hold a hearing on it within fourteen (14) days after the filing of the
20 petition and shall serve notice upon the accusing party and upon the accused.

21 (2) At the hearing, which may be continued from time to time as
22 determined by the county court, the court shall hear all evidence and
23 testimony and, after hearing it, shall enter an order either dismissing the
24 original or temporary order or making the order permanent.

25 (3) The parties represented at the hearing may be represented by
26 counsel.

27 (d)(1) If the order is made permanent, the accused party shall, within
28 ten (10) days thereafter, cause the solid waste which has been illegally
29 dumped on private or public property to be removed therefrom and disposed of
30 properly.

31 (2)(A) If, after ten (10) days from the date of the order, the
32 person against whom the order is directed has not removed the solid waste from
33 the public or private property and properly disposed of it as noted in the
34 order, the governmental agency or the owner of the property may cause it to be
35 moved and shall file with the county court a verified statement in writing of
36 the cost of removal.

1 (B) After reviewing the statement, if the court determines it to
2 be reasonable, the court shall enter an order upon the judgment docket of the
3 county court of the amount thereof, which shall be a judgment against the
4 party against whom the judgment was issued and may be enforced as any other
5 judgment.

6 (e) Any party aggrieved by any order of the county court under this
7 subchapter may appeal therefrom to the circuit court, and the circuit court
8 shall try the case de novo.

9 ~~8-6-505~~ 8-6-506. Criminal, civil, and administrative penalties.

10 In addition to the proceedings described in § 8-6-504, every person
11 convicted of a violation of this subchapter shall be subject to the criminal,
12 civil, or administrative penalties as specified in § 8-6-204.

13 ~~8-6-506~~ 8-6-507. Consequences of unpaid fines and costs.

14 (a) In all convictions for violations of the provisions of this
15 subchapter when the fine and costs are not paid, the person convicted shall be
16 subject to administrative or civil enforcement action.

17 (b) Sanctions may include administrative, civil, or criminal penalties
18 as provided in the Arkansas Solid Waste Management Act, § 8-6-201 et seq."

19

20 SECTION 2. Arkansas Code Annotated § 8-6-1002(a) is amended to read as
21 follows:

22 "(a)(1) There is established on the books of the Treasurer of State,
23 Auditor of State, and Chief Fiscal Officer of the State a trust fund to be
24 known as the Landfill Post-Closure Trust Fund.

25 (2) In addition to all moneys appropriated by the General Assembly
26 to the fund, there shall be deposited in the fund all landfill disposal fees
27 collected pursuant to this subchapter and any moneys received by the state as
28 a gift or donation to the fund or any federal moneys designated to enter the
29 fund, and all interest earned upon moneys deposited in the fund.

30 (3) ~~No more than four percent (4%) of the moneys~~ Moneys received
31 ~~annually~~ into the fund ~~shall~~ may also be used by the department for
32 administrative purposes, the administration of landfill post-closure
33 ~~corrective action pursuant to this subchapter.~~ at a level not to exceed three
34 hundred thousand dollars (\$300,000) annually, with an annual escalator not to
35 exceed three percent (3%). ~~However, in~~ In the event the total amount in the
36 Landfill Post-Closure Trust Fund equals or exceeds ~~ten million dollars~~

1 ~~(\$10,000,000)~~ twenty-five million dollars (\$25,000,000), no additional moneys
2 shall be collected pursuant to this subchapter until the total amount in the
3 fund equals or is less than ~~six million dollars (\$6,000,000)~~ fifteen million
4 dollars (\$15,000,000), at which time such collection of moneys shall resume.

5 (4)(A) Effective July 1, 1997, and annually thereafter, an
6 apportionment of the moneys in the Landfill Post-Closure Trust Fund, not to
7 exceed one million dollars (\$1,000,000) per fiscal year, shall be allocated
8 from the moneys deposited into the Landfill Post-Closure Trust Fund to be
9 utilized by the department to administer and enforce the Illegal Dump
10 Eradication and Corrective Action Program, in accordance with conditions set
11 forth in Arkansas Code Annotated § 8-6-501, et seq. No more than fifteen
12 percent (15%) of this allocation may be used for administrative purposes by
13 the department pursuant to the activities related to the Illegal Dump
14 Eradication and Corrective Action Program for the first fiscal year of the
15 program and ten percent (10%) annually thereafter. Further, the Illegal Dump
16 Eradication and Corrective Action Program shall also include any moneys
17 received by the State as a gift or donation to the program and any federal
18 government moneys designated to enter the program.

19 (B) The apportionment authorized by this subsection shall
20 terminate five (5) years from the effective date of this act, and that the
21 Illegal Dump Eradication and Corrective Action Program shall receive no funds
22 from the Landfill Post-Closure Trust Fund beyond that date."

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24 SECTION 3. Arkansas Code Annotated §8-6-1002(e) is hereby added to read
25 as follows:

26 "(e) (1) An owner or operator of a permitted landfill shall establish
27 and at all times maintain financial assurance for the post-closure maintenance
28 of said landfill. At a minimum, each owner or operator shall provide no less
29 than twenty (20) percent of estimated post-closure maintenance costs through a
30 financial mechanism readily negotiable by the department to cash funds (e.g.,
31 letter of credit, surety bond, irrevocable trust, insurance, or other
32 mechanism approved by the department) upon default by the owner and operator
33 of post-closure obligations.

34 (2) If, after proper closure of a landfill, the department
35 reasonably determines that the owner or operator cannot be located or cannot
36 otherwise satisfy, in whole or part, post-closure maintenance obligations, the

1 department is authorized to expend the necessary funds from the Post-Closure
2 Trust Fund to satisfy the requirements of state and federal law and to prevent
3 or abate releases to the environment.

4 (3) If the department is required to expend funds from the Post-
5 Closure Trust Fund due to the failure of an owner or operator to meet the
6 requirements of this subsection, the department shall pursue collection and
7 recovery of the funds by issuing an Administrative Order notifying the owner
8 or operator by certified mail at the last known address of the owner or
9 operator of the action taken by the department and the amount of funds
10 expended from the Fund, and that the Administrative Order may be appealed in
11 accordance with the department's regulations."

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13 SECTION 4. Arkansas Code Annotated §8-6-1603(a)(4)(C) is hereby added
14 to read as follows:

15 "(C) The amount of financial assurance shall be in accordance with
16 Arkansas Code Annotated §8-6-1002(e) and the regulations issued thereunder."

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18 SECTION 5. Arkansas Code Annotated §8-6-1604(d) is hereby amended to
19 read as follows:

20 "(d) ~~No more than four percent (4%) of the moneys~~ Moneys received
21 annually into the fund shall be used by the department for the administration
22 of remedial actions performed as a result of this subchapter."

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

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28 SECTION 7. If any provision of this act or the application thereof to
29 any person or circumstance is held invalid, such invalidity shall not affect
30 other provisions or applications of the act which can be given effect without
31 the invalid provision or application, and to this end the provisions of this
32 act are declared to be severable.

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

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1 SECTION 9. EMERGENCY. It is found and determined by the General
2 Assembly of the State of Arkansas that the fiscal year begins on July 1, and
3 that this emergency clause is necessary in order that uniformity can be
4 achieved at the beginning of the 1997-1998 fiscal year for money deposited
5 into the Landfill Post-Closure Trust Fund and the moneys allocated from that
6 fund for the Illegal Dump Eradication and Corrective Action Program.
7 Therefore, an emergency is declared to exist and this act being necessary for
8 the preservation of the public peace, health, and safety, shall be in full
9 force and effect from and after July 1, 1997.

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/s/Ross et al

APPROVED:3-31-97