

Act 643 of the 1989 Regular Session.

Act 643

SB501

By: Senator Wilson

"AN ACT TO AMEND THE ARKANSAS HAZARDOUS WASTE MANAGEMENT ACT, CODIFIED AT TITLE 8, CHAPTER 7, SUBCHAPTER 2 OF THE ARKANSAS CODE ANNOTATED TO PROVIDE THAT DISTRIBUTION AND MARKETING OF HAZARDOUS WASTE ARE INCLUDED WITHIN THE DEFINITION OF 'HAZARDOUS WASTE MANAGEMENT' AND ARE SUBJECT TO REGULATION UNDER THE ACT; TO PROVIDE THAT KNOWING VIOLATIONS OF THE ACT THAT CAUSE THE RELEASE OF HAZARDOUS WASTE TO THE ENVIRONMENT OR THE KNOWING ENDANGERMENT OF HUMAN HEALTH ARE PUNISHABLE AS FELONIES; TO PROVIDE THAT COURTS OF COMPETENT JURISDICTION ARE AUTHORIZED TO ASSESS CIVIL PENALTIES FOR VIOLATIONS OF THE ACT IN ACTIONS INITIATED BY THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY UNDER THE ACT; TO PROVIDE AUTHORITY TO REQUIRE CERTIFICATION BY THE DEPARTMENT OF PERSONNEL TO OPERATE ANY COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY; TO PROVIDE THAT GENERATORS OF HAZARDOUS WASTE ARE OWNERS OR OPERATORS OF ALL SITES USED FOR THE TREATMENT, STORAGE OR DISPOSAL OF HAZARDOUS WASTE ARE SUBJECT TO THE FEES PROVIDED IN THE ACT; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code Annotated 8-7-202(4) is hereby amended to read as follows:

"(4) Qualify the Department of Pollution Control and Ecology to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended; and"

SECTION 2. Arkansas Code Annotated 8-7-203(7) is hereby amended to read as follows:

"(7) 'Hazardous waste management' means the systematic control of the generation, collection, distribution, marketing, source separation, storage, transportation, processing, recovery, disposal, and treatment of hazardous waste;"

SECTION 3. Arkansas Code Annotated 8-7-204 is hereby amended to read as follows:

"8-7-204. Penalties. (a) Any person who

(1) knowingly disposes, dumps or abandons hazardous waste at any site or facility other than one at which such activity is authorized by permit or regulation issued pursuant to this subchapter; or

(2) knowingly violates any condition or requirement of this act or any applicable regulation, permit, or order issued pursuant to this act and which violation thereby directly and proximately causes hazardous waste to be disposed or released into the environment of this state in a manner not authorized by this act or permits and regulations issued pursuant to this act; or

(3) knowingly violates any condition or requirement of this act or any applicable regulation, permit, or order issued pursuant to this act and leaves the state or removes his person from the jurisdiction of this state for

the purpose of avoiding civil or criminal prosecution for such violation; or
(4) willfully resists, impedes, or interferes with the director or any authorized employees of the department or law enforcement officers in the performance of duties pursuant to this subchapter; or

(5) knowingly submits materially false information or makes materially false statements to the director or to authorized employees of the department or law enforcement officers with respect to information required to be submitted or reported pursuant to the authority of this subchapter shall be guilty of a felony. Upon conviction, that person shall be subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment for not more than five (5) years, or both such fine and imprisonment. Each day or part of a day during which the violation is continued or repeated shall constitute a separate offense. For all other purposes other than disposition, the offense shall be a class C felony.

(b) Any person who knowingly violates any condition or requirement of this act or any applicable regulation, permit, or order issued pursuant to this act and who knows at the time that he thereby directly and proximately places another person in imminent danger of death or serious bodily injury shall be guilty of a felony. Upon conviction, that person shall be subject to a fine of not more than twenty-five thousand dollars (\$25,000), or imprisonment for not more than twenty (20) years, or both such fine and imprisonment. Each day or part of a day during which the violation is continued or repeated shall constitute a separate offense. For all other purposes other than disposition, the offense shall be a class B felony.

(c) Notwithstanding the limit on fines imposed by subsections (a) or (b) above, if a person convicted of an offense specified in subsections (a) or (b) above has derived pecuniary gain from commission of the offense, then he may be sentenced to pay a fine not exceeding double the amount of such pecuniary gain.

(d) Any person who violates any provision of this subchapter or the regulations issued pursuant to this subchapter or who violates any condition of a permit issued under this subchapter may:

(1) In accordance with the regulations issued by the commission, be assessed a civil penalty by the commission. Such penalty shall not exceed twenty-five thousand dollars (\$25,000) for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment. However, no civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing on the violation pursuant to 8-4-218, 8-4-219, and 8-4-221. Appeal of the commission's decision may be taken in accordance with the appellate procedure specified in 8-4-222 - 8-4-229. Penalties collected pursuant to this paragraph shall be deposited in the Emergency Response Fund, pursuant to 8-7-410;

(2) In any civil action instituted by the department under this subchapter, be assessed a civil penalty by the court. The penalty shall not exceed twenty-five thousand dollars (\$25,000) for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments. Penalties collected pursuant to this paragraph shall be deposited into the operating fund of the department for use in the administration of this subchapter.

(e) The department is authorized to institute a civil action in any court of competent jurisdiction to restrain any violation of, and to compel compliance with, provisions of this subchapter and of any rules, regulations, orders, or permits issued pursuant thereto. The Department is also authorized to require the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter or to recover any expenses reasonably incurred by the department in

removing, correcting, or terminating any adverse effects resulting therefrom, including the cost of investigation, inspection, or survey establishing the violation or unlawful act and to recover payment to the state for any other expenses of actual damage resulting therefrom and to recover civil penalties assessed pursuant to subsection (d) of this section. All expenses of the department recovered under this subsection shall be deposited in the operating fund of the department for use in the administration of this subchapter."

SECTION 4. Arkansas Code Annotated 8-7-209 is hereby amended to read as follows:

"8-7-209. Powers and duties generally. (a) The department shall have the following powers and duties:

(1) To administer and enforce all laws, rules, and regulations regarding hazardous waste management;

(2) To conduct and publish such studies of hazardous waste management in this state as shall be deemed appropriate including, but not limited to: (A) A description of the sources of hazardous waste generated within the state;

(B) Information regarding the types and quantities of such waste; and

(C) A description of current hazardous waste management practices and costs including treatment, recovery, and disposal;

(3) To develop, publish, and implement plans in accordance with the provisions of this subchapter for the safe and effective management of hazardous wastes within this state including, but not limited to:

(A) The establishment of criteria for the identification of those locations within the state which are suitable for establishment of hazardous waste treatment or disposal facilities or sites; and

(B) Those locations which are not suitable for such purposes;

(4) To establish criteria for determination of whether any waste or combination of wastes is hazardous for purposes of this subchapter and to identify and specify wastes or combination of wastes as being hazardous;

(5) To adopt, after notice and public hearing, and to promulgate, modify, repeal, and enforce rules and regulations regarding hazardous waste management as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter and the powers and duties of the department under it including, but not limited to, rules and regulations for:

(A) The containerization and labeling of hazardous wastes, which rules, to the extent practicable, shall be consistent with those issued by the United States Department of Transportation, the United States Environmental Protection Agency, and the Arkansas Transportation Safety Agency;

(B) Establishing standards and procedures for the safe operation and maintenance of facilities;

(C) Identifying those wastes or combination of wastes which are incompatible and which may not be stored or disposed of together and procedures for preventing the storage, disposals, recovery, or treatment of incompatible wastes together;

(D) The reporting of hazardous waste management activities;

(E) Establishing standards and procedures for the certification of supervisory personnel at hazardous waste treatment or disposal facilities or sites as required under 8-7-219(3); and

(F) Establishing a manifest system for the transport of hazardous waste and prohibiting the receipt of hazardous waste at storage, processing, recovery, disposal, or transport facilities or sites without a properly completed manifest;

(6) To issue, continue in effect, revoke, modify, or deny, under

such conditions as it may prescribe permits for the transportation of hazardous waste and the establishment, construction, operation, or maintenance of hazardous waste treatment, storage or disposal facilities or sites, as more particularly prescribed by 8-7-215 - 8-7-222;

(7) To make such investigations and inspections and to hold such hearings, after notice, as it may deem necessary or advisable for the discharge of its duties under this subchapter and to ensure compliance with this subchapter and any orders, rules, and regulations issued pursuant thereto;

(8) To make, issue, modify, revoke, and enforce orders, after notice and hearing, prohibiting violation of any of the provisions of this subchapter, or of any rules and regulations issued pursuant thereto or any permit issued thereunder, and requiring the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter;

(9) To institute proceedings in the name of the department in any court of competent jurisdiction to compel compliance with, and to restrain any violation of the provisions of this subchapter, or any rules, regulations, and orders issued pursuant thereto, or any permit issued thereunder, and to require the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter. In any civil action in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any state of the proceeding that irreparable damage will occur should the requested relief not be granted, nor that the remedy at law is inadequate;

(10) To initiate, conduct, and support research, demonstration projects, and investigations and coordinate all state agency research programs pertaining to hazardous waste management, and to establish technical advisory committees to assist in the development of procedures, standards, criteria, and rules and regulations, the members of which may be reimbursed for travel expenses;

(11) To establish policies and standards for effective hazardous waste management; and

(12) To establish standards and procedures for the certification of personnel to operate hazardous waste treatment or disposal facilities or any commercial hazardous waste management facilities.

(b) In addition to the powers enumerated in subsection (a) of this section, the department shall have and may use in the administration and enforcement of this subchapter all of the powers which it has under other laws administered by it, including the Arkansas Water and Air Pollution Control Act, 8-4-101 - 8-4-106, 8-4-201 - 8-4-229, 8-4-301 - 8-4-313, and Arkansas Solid Waste Management Act, 8-6-201, et seq."

SECTION 5. Arkansas Code Annotated Section 8-7-211 is hereby amended to read as follows:

"8-7-211. Variances to rules. Where the application of, or compliance with, any rule or regulation issued under this subchapter, in the judgment of the Commission, would cause undue or unreasonable hardship to any person and not cause substantially adverse environmental effects, the Commission may grant a variance, waiver, or extension to the same extent that such variance, waiver, or extension would be allowable under the Resource Conservation and Recovery Act of 1979, as amended, and the regulations promulgated thereunder. In no case shall the duration of any such variance exceed one (1) year. Renewals or extensions may be given only after opportunity for public comment on each such renewal or extension."

SECTION 6. Arkansas Code Annotated 8-7-216 is hereby amended to read as follows:

"8-7-216. Permits - issuance generally. (a) Permits shall be issued under such terms and conditions as the department may prescribe under the provisions of this subchapter and under such terms and conditions as the Arkansas Transportation Safety Agency may prescribe for the transportation of hazardous wastes.

(b) Facilities required to have a permit under this Act, or which are operating under the terms of permits issued under the Arkansas Waste and Air Pollution Control Act 8-4-101 et seq., or the Arkansas Solid Waste Management Act 8-6-201 et seq., as of the date of enactment of this Act (March 14, 1979), may continue in operation until such time as a permit is issued under the provisions of this Act by the department, provided the owner or operator of such facility has made application on forms provided by the department for such permit within six (6) months of enactment of the Act (September 14, 1979).

(c) Facilities required to have a permit under this Act due to statutory or regulatory changes which occur after enactment of Act 406 of 1979 (March 14, 1979) may continue in operation until such time as a permit is issued under this Act, provided that the owner or operator notifies the department of newly regulated activities at the facility within ninety (90) days of the effective date of each statutory or regulatory changes and makes initial permit application within 180 days of the effective date of such changes on forms provided by the department. This paragraph shall not apply to any facility at which interim operating authority or a final permit has previously been terminated or denied.

(d) Interim operating authority acquired pursuant to paragraph (b) or (c) above shall terminate for incineration facilities on November 8, 1989, unless the owner or operator applied for final permit determination by November 8, 1988.

(e) Interim operating authority acquired pursuant to paragraph (b) or (c) above shall terminate for storage and treatment facilities on November 8, 1992, unless the owner or operator applied for final permit determination by November 8, 1988.

(f) Interim operating authority acquired pursuant to paragraph (c) above for land disposal facilities shall terminate twelve (12) months after the facility first becomes subject to permitting unless the owner or operator certifies compliance with all applicable groundwater monitoring and financial responsibility requirements."

SECTION 7. Arkansas Code Annotated 8-7-218 is hereby amended to read as follows:

"8-7-218. Permits - Compliance with subchapter, state and federal standards, regulations, etc. (a) No permits shall be issued by the Department of Pollution Control and Ecology for any facility unless the department, after opportunity for public comment, has determined that the facility has been designed and will be operated in such manner that any emissions from the facility will comply with the provisions of this subchapter, and all applicable state and federal standards and regulations concerning air and water quality, and that the transfer, handling, and storage of materials within the facility will not cause conditions which would violate state and federal standards concerning worker safety or create unreasonable hazards to the environment or to the health and welfare of the people living and working in or near the facility.

(b) (1) No permit shall be issued by the department for any commercial disposal or storage facility off the site where the hazardous waste is generated until the department has adopted rules, regulations, standards, and

procedures pursuant to 8-7-209.

(2) The rules, regulations, standards, procedures, or other requirements adopted and imposed by the department shall not be less stringent than the regulations promulgated or revised by the Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended.

(c) No permit shall be issued for hazardous waste treatment, storage, or disposal facilities except under the terms of regulations of the department which conform to the provisions of 3005 of the federal Resource Conservation and Recovery Act, as amended."

SECTION 8. Arkansas Code Annotated 8-7-225(a) is hereby amended to read as follows:

"(a) The owner or operator of any hazardous waste management facility or site shall notify the department as to hazardous waste management activities in accordance with the requirements of this Act, and regulations, permits, and orders issued under this Act, and shall establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods, take such samples, perform such tests, and provide such other information to the department as the director may reasonably require."

SECTION 9. Arkansas Code Annotated 8-7-226 is hereby amended to read as follows:

"8-7-226. Fees. The department shall have authority to establish by regulation a schedule of fees to recover the costs of processing permit applications and permit renewal proceedings, on-site inspections and monitoring, the certification of personnel to operate hazardous waste treatment, storage or disposal facilities, and other activities of department personnel which are reasonably necessary to assure that generators and transporters of hazardous waste and hazardous waste management facilities are complying with the provisions of this subchapter and which reasonably should be borne by the transporter, generator, or owner or operator of the hazardous waste management facility; provided that generators of over 2200 pounds of hazardous waste per month shall not be assessed more than \$500 annually pursuant to this subchapter for inspections and monitoring generators of 220 pounds to 2200 pounds of hazardous waste per month shall not be assessed more than \$100 annually pursuant to this subchapter for inspections and monitoring, and generators of less than 220 pounds of hazardous waste per month shall be assessed no fees hereunder for inspections and monitoring. It is further provided that all fees collected pursuant to this section shall be dedicated to enabling the department to receive authorization to administer a hazardous waste management program in Arkansas pursuant to the Resource Conservation and Recovery Act of 1979, as amended by the Hazardous and Solid Waste Amendments of 1984. The authority to assess fees pursuant to this section shall terminate on October 1, 1991, unless the department has received authorization for all available components of the program by that date from the U.S. Environmental Protection Agency."

SECTION 10. 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 11. All laws and parts of laws in conflict with this act are hereby repealed.

APPROVED: March 17, 1989
