

As Engrossed: 2/15/95

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

A Bill

ACT 496 OF 1995
HOUSE BILL 1585

4 **By: Representatives Jones and Flanagin**

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For An Act To Be Entitled

8 "AN ACT PROVIDING THAT ALL COMMERCIAL MEDICAL WASTE
9 INCINERATION FACILITIES BEGINNING OPERATION AFTER THE
10 EFFECTIVE DATE OF THIS ACT MUST COMPLY WITH LAWS PASSED
11 SINCE ISSUANCE OF A PERMIT; PERMITS FOR THE CONSTRUCTION
12 AND OPERATION OF COMMERCIAL MEDICAL WASTE INCINERATORS
13 SHALL NOT BE TRANSFERRABLE; REQUIRING THE OWNERS OR
14 OPERATORS OF COMMERCIAL MEDICAL WASTE FACILITIES TO
15 PROVIDE FINANCIAL ASSURANCE TO GUARANTEE SAFE OPERATION
16 AND CLOSURE; DIRECTING THE DEPARTMENT OF POLLUTION CONTROL
17 AND ECOLOGY AND THE HEALTH DEPARTMENT TO PREPARE A REPORT
18 TO THE GENERAL ASSEMBLY CONCERNING MEDICAL WASTE DISPOSAL
19 ISSUES; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES"

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Subtitle

22 "THE MEDICAL WASTE DISPOSAL ACT OF 1995"
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26 SECTION 1. Legislative Intent. As scientific understanding of the
27 potential public health and environmental impacts from large-scale medical
28 waste incineration evolves, the General Assembly finds that continued caution
29 regarding the development of commercial-scale medical waste incineration
30 facilities is necessary in order to protect the public health, safety and
31 welfare. Even though medical waste incinerators constitute major sources of
32 potentially harmful emissions into the air, the federal Environmental
33 Protection Agency has yet to promulgate technology standards necessary to
34 assure safe operation. In the meantime, highly speculative ventures seek to
35 profit from the regulatory uncertainty by promoting undercapitalized
36 incineration facilities handling volumes of waste far in excess of that from

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1 the largest hospital. This act seeks to protect the public welfare by
2 assuring that

3 (1) commercial-scale medical waste incinerators beginning
4 operation after the effective date of this Act will be in compliance with the
5 most recent operating standards and regulations;

6 (2) the owner or operator of any commercial-scale medical waste
7 incinerator beginning operation after the effective date of this Act shall
8 demonstrate financial assurances necessary to insure the proper operation,
9 maintenance and closure of such facilities;

10 (3) a transfer of ownership or control of any commercial-scale
11 medical waste will prompt regulatory officials to apply permitting standards
12 and procedures as stringent as those applicable for the issuance of a new
13 permit;

14 (4) generators of medical waste are encouraged to follow the
15 hierarchy of waste management goals set out in the Arkansas Pollution
16 Prevention Act, A.C.A. §8-10-201 et seq.; and

17 (5) both generators of medical waste and regulatory officials will
18 give proper consideration to alternative technologies for treating medical
19 waste other than incineration.

20 This act shall be liberally construed so as to achieve remedial intent.

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22 SECTION 2. A.C.A. §8-6-1304(a) is amended to read as follows:

23 "(a) This subchapter shall not apply to medical waste incineration
24 facilities constructed and operating before March 20, 1992, or to medical
25 waste incineration facilities operated by health care facilities for the
26 purpose of disposing of medical waste."

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28 SECTION 3. A.C.A. §8-6-1304 is amended by adding the following
29 subsection (c):

30 "(c) The requirements of this Act shall apply to any commercial medical
31 waste incineration facility that has not initiated operation prior to the
32 effective date of this Act. For the purposes of construing this subsection
33 and the application of this Act, initiation of operations has not occurred
34 until the Department has approved the installation of all permitted pollution
35 control equipment and the facility is receiving medical waste for

1 incineration."

2 SECTION 4. A.C.A. §8-6-1305(a) is amended to read as follows:

3 "(a) The department shall not accept any applications or issue any
4 permits for the construction or operation of any commercial medical waste
5 incineration facilities until the federal regulations promulgated pursuant to
6 42 U.S.C. § 7429(a)(1)(C) become effective, or the federal Environmental
7 Protection Agency's dioxin reassessment is finalized, whichever is later."

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9 SECTION 5. A.C.A. §8-6-1305 is amended inserting additional subsections
10 at the end thereof to read as follows:

11 "(e)(1) Notwithstanding the general provisions of other laws, permits
12 for the construction or operation of medical waste incineration facilities
13 shall not be transferrable upon a change in ownership or control of a
14 facility. Prior to any change in ownership or control of a medical waste
15 incineration facility, the proposed new owner must apply for a new permit and
16 abide by the requirements of A.C.A. §8-1-106. The Department shall process
17 the application as one for a new permit and apply the most current statutes,
18 regulations, technological standards, and operational controls as conditions
19 precedent for granting a permit or operational authority.

20 (2) Any agreement or contract, written or oral, for a future
21 transfer of operational control or ownership of a permitted commercial medical
22 waste incineration facility, or such an agreement or contract contingent upon
23 the department's approval, shall be subject to immediate disclosure to the
24 department pursuant to A.C.A. §8-1-106. Upon such disclosure, the department
25 shall cause the intent to transfer ownership or control to be publicly noticed
26 and produce the disclosure documentation required by A.C.A. §8-1-106 for
27 public inspection. After a reasonable period for public review, the
28 department shall issue a written determination as to whether the intended
29 transfer of ownership or control should be approved, subject to the right of
30 appeal provided by A.C.A. §8-1-106(e). During the pendency of the
31 department's and the public's review of the disclosure materials required by
32 this Section, any actions taken by the permittee or proposed transferee are at
33 their own risk, and shall not be construed by the department or commission as
34 accruing equities in their favor.

35 (3) For the purposes of this subsection, corporate ownership shall be

1 defined as a controlling or majority interest in a commercial medical waste
2 incineration facility, either through outright ownership of stock or other
3 indicia of title, or any equitable right to such title as construed from the
4 totality of the circumstances. Control shall be presumed to reside with the
5 owner as defined herein, unless circumstances indicate that a person or entity
6 other than an employee or agent of the owner is exercising ultimate decision-
7 making authority regarding the construction or operation of a commercial
8 medical waste incineration facility.

9 (4) Any violation of this subsection shall constitute grounds for
10 permit revocation and imposition of the civil and criminal penalties
11 authorized by A.C.A. §8-4-103.

12 (f) If the original permit was issued more than one year prior to the
13 initiation of incineration activities at a commercial medical waste
14 incineration facility, the Department may review the conditions of the permit
15 to determine whether good cause exists for modifying operating parameters to
16 assure the maximum feasible control efficiency of emissions. Any
17 modifications proposed by the Department must be supported by appropriate
18 references to the scientific and engineering literature or documented studies
19 conducted by the Department."
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21 SECTION 6. Subchapter 13 of Chapter 6 of Title 8 of the Arkansas code
22 is amended to add the following section:

23 "8-6-1307. (a) Prior to initiating operations at a commercial medical
24 waste incineration facility, the owner or operator must demonstrate:

25 (1) Evidence of liability insurance in such amount as the
26 department may determine to be necessary for the protection of public health
27 and safety and protection of the environment; and

28 (2) Evidence of financial responsibility in such form and amount
29 as the department may determine to be necessary to insure that, upon
30 abandonment, cessation, or interruption of the operation of the facility, all
31 appropriate measures can be taken to prevent present and future damage to the
32 public health and safety and to the environment. In determining the adequacy
33 of the evidence submitted, the department may consider credible evidence
34 indicating that the permittee is undercapitalized, insolvent, or otherwise
35 financially incapable of assuring environmentally sound operations at the

1 permitted facility.

2 (b) In determining the nature of financial assurance guarantees required
3 by subsection(a), the department and the permittee shall follow, to the extent
4 applicable, the federal regulations governing financial assurance of
5 facilities governed by Subtitle D of the Resource Conservation and Recovery
6 Act of 1976 as amended 42 U.S.C. §6901 et seq."

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8 SECTION 7. A.C.A. 8-6-1302(2) is amended to read as follows:

9 "(2) 'Department' means the Arkansas Department of Pollution Control &
10 Ecology and 'Director' means the director of the Arkansas Department of
11 Pollution Control & Ecology."

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13 SECTION 8. Report to the General Assembly. By December 30, 1996, the
14 Department of Pollution Control & Ecology and the Department of Health shall
15 prepare a report for review by the Joint Interim Public Health, Welfare, and
16 Labor Committee. In general, the report shall address the public health and
17 environmental concerns raised by the generation and disposal of medical waste.
18 At a minimum, the report shall advise the Committee of the latest regulations
19 developed by the Environmental Protection Agency governing medical waste
20 incineration, the latest findings of the dioxin reassessment task force, and
21 the feasibility of alternative technologies for efficiently treating medical
22 waste.

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24 SECTION 9. CODE. All provisions of this act of a general and permanent
25 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
26 Code Revision Commission shall incorporate the same in the Code.

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28 SECTION 10. SEVERABILITY. If any provisions of this act or the
29 application thereof to any person or circumstance is held invalid, such
30 invalidity shall not affect other provisions or applications of the act which
31 can be given effect without the invalid provision or application, and to this
32 end the provisions of this act are declared to be severable.

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34 SECTION 11. GENERAL REPEALER. All laws and parts of laws in conflict
35 with this act are hereby repealed.

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SECTION 12. EMERGENCY CLAUSE. The General Assembly finds that both scientific understanding of the effects of medical waste incineration and the regulatory mechanisms for assuring safe operations are in a state of flux. The General Assembly deems this Act necessary to assure that commercial medical waste incineration facilities are sited and operated in accordance with the latest applicable laws and regulations, and that the operators of such facilities have the financial means necessary to maintain safe operations. Therefore, an emergency is hereby declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.

/s/Rep. Jones, et al

APPROVED: 3-1-95

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