

Summary of Act 274 of 2014

Introduction and background : Section 15 allows ADEQ to use Landfill Post-Closure Trust Fund monies for closure activities at a landfill owned by a regional solid waste management district (RSWMD) if ADEQ determines that the RSWMD has filed for federal bankruptcy protection, is unable to meet its debt obligations in the ordinary course of its operation, or is otherwise insolvent. Ozark Mountain Solid Waste District filed for Chapter 9 bankruptcy protection, and ADEQ filed a response that the district had outstanding obligation related to environmental noncompliance and the need for closure of the district-owned NABORS landfill. The district was also in default of payments on bonds issued to finance purchase of that landfill, and upon the motion of Bank of the Ozarks as Trustee for the bondholders, the bankruptcy court determined that the district was not eligible for bankruptcy protection as a matter of state law and dismissed the matter, also finding the district's refusal to exercise its statutory authority to impose fees under Ark. Code Ann. § 8-6-714 to meet its obligations displayed a lack of good faith as required by the bankruptcy code. ADEQ had previously filed an environmental enforcement action against the district in Pulaski County Circuit Court CV-2013-32-4 and obtained a summary judgment. Under the authority of language identical to Section 45 in previous ADEQ appropriation bills, ADEQ began closure activities at the NABORS landfill, using monies from the Landfill Post-Closure Trust Fund, for the protection of public health.

I. Question: Has a civil action been implemented under Section 45 or the same language in past appropriation acts?

Short Answer: A Civil Action under Section 45 of 274 of 2014 was never entered into.

ADEQ has not instituted any civil action under the language in Section 45. The Bank of the Ozarks, as Trustee for the Bondholders filed a Complaint for Appointment of Receiver for the district, and ADEQ intervened in that action to protect the interests of the State. See *Bank of the Ozarks v. Ozark Mtn Solid Waste District*, Pulaski County Circuit Court No. 60CV-14-4479. This action resulted in a receiver being appointed for the district and the Receiver's report and recommendations, including imposition of the service fee by the district, were approved by the court.

2. Question: Is Section 45 or the same language in past appropriation acts related to the \$18 fee?

Short Answer: The \$18 fee is not a result of Section 45 of 274 of 2014.

Not directly. However, pursuant to the court orders approving the Receiver's recommendations, a portion of the proceeds from the \$18 annual fee will be used to reimburse the Landfill Post-Closure Trust Fund for the closure costs expended at the NABORS landfill, precluding the need for a civil action to recover those funds as provided in Section 45.

General Information regarding Section 45 of Act 274 of 2014

Section 45 of Act 274 of 2014 concerned the Landfill Post-Closure Trust Fund. The act gives the Department of Environmental Quality two additional powers (notwithstanding § 8-6-1001 et seq. and Acts 2013, No. 1202, § 41, which was special language in the ADEQ appropriation that remains with minor changes as Section 45 of the 2018 appropriation):

- Expend monies from the Landfill Post-Closure Trust Fund to a state-approved contractor or the regional solid waste management district to complete all actions necessary to achieve the final closure and post-closure care of a landfill owned by a regional solid

waste management district if the Department of Environmental Quality determines that the regional solid waste management district has filed for protection under federal bankruptcy law, is unable to meet its debt obligations in the ordinary course of its operations, or it other insolvent; and

- Institute a civil action against the regional solid waste management district and all of the entities comprising the regional solid waste management district to seek the recovery of any funds expended from the Landfill Post-Closure Trust Fund under the above provision unless satisfactory repayment arrangements are reached and agreed upon by the department with the district and the bondholders.

The section included legislative intent provisions stating that a growing number of regional solid waste management districts within the state were facing difficulty in funding the necessary costs of closure and post-closure care of landfills owned by the districts and without closure and post-closure care of landfills, irreparable harm to human health and the environment would occur.

The section was only effective from July 1, 2014 until June 30, 2017 in the 2014 act, but subsequent appropriations have extended the effective period. Act 254 of the 2018 Fiscal Session (the ADEQ appropriation bill) extended the language until June 30, 2019. There's been a small change in the language over time in the "Notwithstanding. . ." language at page 23, line 21 of the 2018 act to refer to "any Landfill Post-Closure Trust Fund cleanup restrictions enumerated in this Act", but the language has otherwise not undergone many changes. I have attached excerpts of the relevant language from the 2014 and 2018 appropriations.

This information was provided by Matthew B. Miller, Assistant Director for Legal Services of the Bureau of Legislative Research.