

1 **State of Arkansas**

Call Item II

2 **78th General Assembly**

A Bill

3 **First Extraordinary Session, 1992**

HOUSE BILL 1031

4 **By: Representatives Flanagan, Jones, Capps, S. Miller, McGinnis, Walker, Thurman and**
5 **Wyrick**

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For An Act To Be Entitled

9 "AN ACT TO PROVIDE THAT NO PERMITS MAY BE ISSUED FOR THE
10 CONSTRUCTION OR OPERATION OF A COMMERCIAL MEDICAL WASTE
11 INCINERATION FACILITY; TO REQUIRE PUBLIC NOTICE AND PUBLIC
12 HEARINGS FOR APPLICATIONS FOR PERMITS TO CONSTRUCT AND
13 OPERATE COMMERCIAL MEDICAL WASTE INCINERATION FACILITIES;
14 TO PROVIDE REQUIREMENTS FOR THE LOCATION OF COMMERCIAL
15 MEDICAL WASTE INCINERATION FACILITIES; AND FOR OTHER
16 PURPOSES."

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

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20 SECTION 1. The Arkansas General Assembly has found that there is an
21 increased interest in obtaining permits from the Arkansas Department of
22 Pollution Control and Ecology for the purpose of constructing and operating
23 commercial medical waste incineration facilities. The federal Clean Air Act,
24 at 42 U.S.C. §7429(a)(1)(C), has directed the Environmental Protection Agency
25 to promulgate regulations concerning these facilities. The Arkansas General
26 Assembly has determined that it is necessary to delay the issuance of permits
27 to these facilities until those regulations are promulgated in order to ensure
28 that any permits issued will be based on the latest available information
29 concerning technology and safety as set forth in the federal regulations.

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31 SECTION 2. As used in this act:

32 (1) "Commercial medical waste incineration facility" means any facility
33 accepting medical waste materials for disposal from an off-site source and
34 operating the disposal facility as a business for profit;

35 (2) "Department" means the Arkansas Department of Pollution Control and

1 Ecology;

2 (3) "Occupied structure" means a building or other structure:

3 (A) where any person lives or carries on a business or other
4 calling;

5 (B) where people assemble for purposes of business, government,
6 education, religion, entertainment or public transportation;

7 (C) which is customarily used for overnight accommodation of
8 persons whether or not a person is actually present. Each unit of a structure
9 divided into separate units designed for occupancy is itself an occupied
10 structure; or

11 (D) which has not yet been constructed or completed but for which
12 a building permit, where applicable, has been issued and is valid on the date
13 the application for the permit to construct and operate a commercial medical
14 waste incineration facility is filed.

15 (4) "Person" means any individual or legal entity.

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17 SECTION 3. The department shall not accept any applications or issue
18 any permits for the construction or operation of any commercial medical waste
19 incineration facilities until September 1, 1993 or until the federal
20 regulations promulgated pursuant to 42 U.S.C. §7429(a)(1)(C) become effective,
21 whichever is later.

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23 SECTION 4. (a) Any person applying for a permit or a permit
24 modification to construct and operate a commercial medical waste incineration
25 facility shall complete the following criteria at least thirty (30) days prior
26 to submitting a permit application to the department:

27 (1) written notification by certified mail to each property owner
28 and resident of any property adjacent to the proposed site of the intent to
29 apply for a permit or permit modification;

30 (2) publication of a public notice in the largest newspaper
31 published in each county where the property which is the subject matter of the
32 proposed facility permit or permit modification is located, and in at least
33 one newspaper of statewide circulation of the intent to apply for a permit or
34 a permit modification to construct and operate a commercial medical waste
35 incineration facility.

36 (b) The department shall provide written notice by certified mail of

1 the proposed permit or permit modification to the mayor of the city and the
2 county judge of the county where the property which is the subject matter of
3 the permit application is located.

4 (c) The department shall conduct a public hearing in the county in
5 which the facility is to be located prior to the issuance of a final permit.

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7 SECTION 5. (a) No permits may be issued by the department for the
8 construction or operation of a commercial medical waste incineration facility
9 in which any of the following factors are present:

10 (1) the location of the facility is within one (1) mile of any
11 occupied structure;

12 (2) the location of the facility is within an active fault zone or
13 an area of high earthquake potential;

14 (3) the location of the facility is within a "regulatory floodway"
15 as adopted by communities participating in the National Flood Program managed
16 by the Federal Emergency Management Administration Commission; or

17 (4) *the location of the facility is within wetland areas.*

18 (b) Exceptions may be made to these requirements only by obtaining
19 written permission from all real property owners and residents of any property
20 adjacent to the site of the proposed commercial medical waste incineration
21 facility.

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23 SECTION 6. Nothing in this act shall be construed to affect the
24 authority of cities and counties to enact zoning regulations or procedures
25 that control the location of medical waste facilities or sites.

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27 SECTION 7. (a) This act shall not apply to medical waste incineration
28 facilities constructed and operating before the effective date of this act
29 operated by health care facilities for the purpose of disposing of medical
30 waste generated by such facility.

31 (b) This act shall not apply to permits for renovations to medical
32 waste incineration facilities constructed and operating before the effective
33 date of this act, either through modification or additional construction,
34 provided that such renovations are for the purpose of:

35 (1) complying with the regulations or standards imposed by local,

1 state, or federal government agencies; or

2 (2) adding additional waste disposal capacity to a medical waste
3 incineration facility constructed and operating before the effective date of
4 this act.

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6 SECTION 8. All provisions of this act of a general and permanent nature
7 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
8 Revision Commission shall incorporate the same in the Code.

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10 SECTION 9. If any provision of this act or the application thereof to
11 any person or circumstance is held invalid, such invalidity shall not affect
12 other provisions or applications of the act which can be given effect without
13 the invalid provision or application, and to this end the provisions of this
14 act are declared to be severable.

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

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19 SECTION 11. EMERGENCY. It is hereby found and determined by the
20 Seventy-Eighth General Assembly that the issuance of commercial medical waste
21 incineration permits will have a significant impact on the citizens and
22 environment of the State of Arkansas; that the Environmental Protection Agency
23 is expected to issue rules and regulations pertaining to commercial medical
24 waste incineration facilities in September of 1993; that it is necessary to
25 delay the issuance of those permits until these federal regulations have been
26 promulgated; that sufficient notification to the public of permit applications
27 is necessary to protect the public interest; and that certain regulations
28 governing the location of commercial medical waste incineration facilities are
29 necessary to protect the public health and welfare. Therefore, an emergency
30 is hereby declared to exist and this act being necessary for the immediate
31 preservation of the public peace, health and safety shall be in full force and
32 effect from and after its passage and approval.

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/s/Flanagin, et al

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