

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

A Bill

SENATE BILL 430

4 By: Committee on Public Health, Welfare, and Labor

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For An Act To Be Entitled

8 "AN ACT TO AMEND CHAPTER 6 OF TITLE 8 OF THE ARKANSAS CODE
9 TO CREATE A SUBCHAPTER ESTABLISHING FINANCIAL ASSURANCE
10 REQUIREMENTS AND ALLOWABLE INSTRUMENTS FOR SOLID WASTE
11 FACILITIES; AND FOR OTHER PURPOSES."

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Subtitle

14 "TO ESTABLISH FINANCIAL ASSURANCE
15 REQUIREMENTS FOR SOLID WASTE MANAGEMENT
16 FACILITIES."

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

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20 SECTION 1. Chapter 6 of Title 8 of the Arkansas Code is amended by
21 adding the following new subchapter:

22 "8-6-1601. Purpose.

23 The purpose of this subchapter is to establish the procedure for
24 posting financial assurance for permitted municipal solid waste landfills,
25 solid waste management systems, or solid waste disposal facilities. The
26 procedure for issuance of permits for solid waste management systems and for
27 solid waste management disposal sites and facilities shall be as provided in
28 the rules and regulations adopted by the commission under this subchapter or
29 as otherwise provided by law. After an application to operate a disposal
30 site or facility has been reviewed and approved, but before a permit is
31 issued, the applicant shall post with the Department of Pollution Control and
32 Ecology, on forms prescribed by the department in accordance with the
33 regulations issued under this subchapter, a corporate surety bond for
34 performance or an acceptable alternative, such as a certificate of deposit or
35 letter of credit, payable to the department and conditional upon faithful

1 performance of all requirements of this subchapter, the regulations issued
2 pursuant to this subchapter, and the permit, including, but not limited to,
3 proper closure of the site or facility. Liability under the bond shall be
4 for the duration of the disposal operation and for that period required to
5 properly close and revegetate the site, and for post-closure care, in
6 accordance with the regulations issued by the commission.

7 8-6-1602. Definitions.

8 As used in this subchapter:

9 (1) Active life means the period of operation beginning with the
10 initial receipt of solid waste and ending at completion of closure
11 activities;

12 (2) Active portion means that part of a facility or unit that has
13 received or is receiving wastes and that has not been closed;

14 (3) Commission means the Commission on Pollution Control and
15 Ecology of the State of Arkansas;

16 (4) Closure plan means a written plan that describes the steps
17 necessary to close all landfill units at any point during its active life in
18 accordance with the cover design requirements in rules and regulations issued
19 pursuant to this subchapter, as applicable;

20 (5) Department means the Department of Pollution Control and
21 Ecology of the State of Arkansas;

22 (6) Disposal site or Disposal facility means any place at which
23 solid waste is dumped, abandoned, or accepted or disposed of for final
24 disposition by incineration, landfilling, composting or any other method;

25 (7) Existing Municipal Solid Waste Landfill Unit means any
26 municipal solid waste landfill unit that was receiving solid waste as of
27 October 9, 1993, or April 9, 1994, as applicable to the Resource Conservation
28 and Recovery Act, Subtitle D. Waste placement in existing units must be
29 consistent with past operating practices or modified practices to ensure good
30 management;

31 (8) Land application unit means an area where wastes are applied
32 onto or incorporated into the soil surface (excluding manure and wastewater
33 treatment sludge spreading operations) for agricultural purposes or for
34 treatment and disposal;

35 (9) Lateral expansion means a horizontal expansion of the waste

1 boundaries of an existing municipal solid waste landfill unit;

2 (10) Municipal solid waste landfill unit means a distinct area of
3 land or an excavation that receives household waste, and that is not a land
4 application unit, surface impoundment, injection well, or waste pile. A
5 municipal solid waste landfill unit also may receive other types of Resource
6 Conservation and Recovery Act, Subtitle D wastes, such as commercial solid
7 waste, nonhazardous sludge, small quantity generator waste and industrial
8 solid waste. Such a landfill may be publicly or privately owned. A
9 municipal solid waste landfill unit may be a new municipal solid waste
10 landfill unit, an existing municipal solid waste landfill unit or a lateral
11 expansion;

12 (11) New municipal solid waste landfill unit means any municipal
13 solid waste landfill unit that has not received waste prior to October 9,
14 1993, or April 9, 1994, as applicable;

15 (12) Operator means the person(s) responsible for the overall
16 operation of a facility or part of a facility;

17 (13) Owner means the person(s) who owns a facility or part of a
18 facility;

19 (14) Person means any individual, corporation, company, firm,
20 partnership, association, trust, state agency, government instrumentality or
21 agency, institution, county, city, town or municipal authority or trust,
22 venture or other legal entity, however organized;

23 (15) Post-closure plan means a written plan that provides a
24 description of monitoring and maintenance activities required in rules and
25 regulations issued pursuant to this subchapter and includes the frequency at
26 which these activities will be performed;

27 (16) RCRA means the Resource Conservation and Recovery Act;

28 (17) Solid waste management system means the entire process of
29 storage, collection, transportation, processing, treatment, and disposal of
30 solid waste, and includes equipment, facilities and operations designed for
31 solid waste management activities, including recycling, source reduction, and
32 the enforcement of solid waste management laws and ordinances;

33 (18) State means the State of Arkansas; and

34 (19) Surface impoundment or Impoundment means a facility or part
35 of a facility that is a natural topographic depression, human-made

1 excavation, or diked area formed primarily of earthen materials (although it
2 may be lined with human-made materials), that is designed to hold an
3 accumulation of liquid wastes or wastes containing free liquids and that is
4 not an injection well. Examples of surface impoundments are holding storage,
5 settling, and aeration pits, ponds, and lagoons.

6 8-6-1603. Procedures generally.

7 (a)(1) Financial Assurance For Closure. The owner or operator
8 must have a detailed written estimate, in current dollars, of the cost of
9 hiring a third party to close the largest area of the disposal site or
10 facility unit requiring a final cover as required under the regulations
11 issued pursuant to this subchapter and the permit during the active life in
12 accordance with the closure plan.

13 (2) The cost estimate shall equal the cost of closing the
14 largest area of all solid waste disposal units requiring a final cover at any
15 time during the active life when the extent and manner of its operation would
16 make closure the most expensive, as indicated by its closure plan.

17 (3) During the active life of the solid waste disposal
18 facility, the owner or operator shall annually adjust the closure cost
19 estimate for inflation.

20 (4) The owner or operator shall establish financial assurance
21 for closure of the permitted municipal solid waste landfill, solid waste
22 management systems, or solid waste disposal facilities in compliance with the
23 regulations issued pursuant to this subchapter and the permit. The owner or
24 operator of each solid waste disposal facility shall provide continuous
25 financial assurance coverage for closure until released from financial
26 assurance requirements by demonstrating compliance with regulations issued
27 pursuant to this subchapter and the permit.

28 (b)(1) Financial Assurance for Post-closure Care. The owner or
29 operator shall have a detailed written estimate, in current dollars, of the
30 cost of hiring a third party to conduct post-closure care in compliance with
31 the post-closure plan developed under the regulations issued pursuant to this
32 subchapter and the permit.

33 (2) The cost estimate for post-closure care shall be based on
34 the most expensive costs of post-closure care during the post-closure care
35 period.

1 (3) During the active life of the solid waste disposal facility
2 and during the post-closure care period, the owner or operator shall annually
3 adjust the post-closure cost estimate for inflation.

4 (4) The owner or operator shall establish financial assurance
5 for costs of post-closure care of the permitted municipal solid waste
6 landfills, solid waste management systems, or solid waste disposal facilities
7 in compliance with regulations issued pursuant to this subchapter and the
8 permit. The owner or operator of each solid waste disposal facility shall
9 provide continuous financial assurance coverage for post-closure care until
10 released from financial assurance requirements for post-closure care by
11 demonstrating compliance with regulations issued pursuant to this subchapter
12 and the permit.

13 (c)(1) Financial Assurance for Corrective Action. The owner or
14 operator, if required to undertake a corrective action program under
15 regulations issued pursuant to this subchapter, shall have a detailed written
16 estimate, in current dollars, of the cost of hiring a third party to perform
17 the corrective action in accordance with regulations issued pursuant to this
18 subchapter.

19 (2) The owner or operator of each municipal solid waste
20 landfill, solid waste management system or solid waste disposal facility
21 shall establish financial assurance for the most recent corrective action
22 program. The owner or operator shall provide continuous coverage for
23 corrective action until released from financial assurance requirements for
24 corrective action by demonstrating compliance with regulations issued
25 pursuant to this subchapter.

26 (d) Allowable Mechanisms. The mechanisms used to demonstrate
27 financial assurance under this section shall ensure that the funds necessary
28 to meet the costs of closure, post-closure care, and corrective action for
29 known releases will be available whenever they are needed. The financial
30 mechanisms shall be legally valid, binding, and enforceable under State and
31 Federal Law. Owners and operators shall choose from the options specified in
32 regulations issued pursuant to this subchapter. A municipality or county
33 may, in lieu of a performance bond, execute a contract of obligation with the
34 Director of the Department of Pollution Control and Ecology. The contract of
35 obligation shall be a binding agreement on the municipality or county,

1 allowing the director or his designee to collect any general revenues being
2 disbursed or to be disbursed from the state to the municipality or county on
3 failure of the municipality or county to fulfill the financial assurance
4 requirements of this subchapter and regulations issued pursuant thereto.

5 8-6-1604. Solid Waste Performance Bond Fund.

6 A Solid Waste Performance Bond Fund is hereby established on the books
7 of the Treasurer of the State, Auditor of State, and Chief Fiscal Officer of
8 the State. In addition to any monies appropriated by the General Assembly to
9 the fund, there shall be deposited in the fund all forfeitures collected
10 under this subchapter, federal government monies designated to enter the
11 fund, any monies received by the state as a gift or donation to the fund, and
12 all interest earned upon monies deposited in the fund. The fund shall be
13 administered by the department and will be used to accomplish remedial
14 action, including closure of lands covered by performance bonds forfeited
15 under this subchapter. No more than four percent (4%) of the monies received
16 annually into the fund shall be used by the department for the administration
17 of remedial actions performed as a result of this subchapter."

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19 SECTION 2. All provisions of this act of a general and permanent
20 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
21 Code Revision Commission shall incorporate the same in the Code.

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23 SECTION 3. If any provision of this act or the application thereof to
24 any person or circumstance is held invalid, such invalidity shall not affect
25 other provisions or applications of the act which can be given effect without
26 the invalid provision or application, and to this end the provisions of this
27 act are declared to be severable.

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29 SECTION 4. All laws and parts of laws in conflict with this act are
30 hereby repealed.

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32 SECTION 5. EMERGENCY. It is hereby found and determined by the
33 General Assembly that this statute is needed in order to make state
34 requirements compatible with federal regulations. Therefore, an emergency is
35 declared to exist, and this act being immediately necessary for the

1 preservation of the public peace, health, and safety, shall be in full force
2 and effect from and after its passage and approval.

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