

State of Arkansas

76th General Assembly

Regular Session, 1987

SENATE BILL 407

By: Senators Scott, Gibson, and Ingram

"AN ACT TO AMEND SUBSECTION (h) OF SECTION 2 AND SECTIONS 3, 5, 6 AND 7 OF ACT 421 OF 1977, AS AMENDED [ARK. STAT. 76-2902(h), 76-2903, 76-2905, 76-2906, AND 76-2907] TO PERMIT THE ARKANSAS STATE HIGHWAY COMMISSION TO REGULATE THE TRANSPORTATION OF HAZARDOUS MATERIALS AND TO CHARGE FEES; TO AMEND SUBSECTION (h) OF SECTION 2, SUBSECTIONS (a) AND (b) OF SECTION 5, AND SECTION 7 OF ACT 406 OF 1979, AS AMENDED [ARK. STAT. 82-4204(e), 82-4205(a) AND (b), AND 82-4207] TO PERMIT THE ARKANSAS STATE HIGHWAY COMMISSION TO REGULATE THE TRANSPORTATION OF HAZARDOUS WASTES; AND FOR OTHER PURPOSES."

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

SECTION 1. Subsection (h) of Section 2 of Act 421 of 1977, as amended, the same being Arkansas Statutes 76-2902(h), is hereby amended to read as follows:

"(h) 'Commission' means the Arkansas State Highway Commission under Amendment 42 of the Arkansas Constitution and Act 123 of 1953, as amended, and 'Department' means its administrative agency the Arkansas State Highway and Transportation Department."

SECTION 2. Section 3 of Act 421 of 1977, as amended, the same being Arkansas Statute 76-2903, is hereby amended to read as follows:

"Section 3. (a) In addition to the specific authority granted to the Commission by this Act to define terms and impose additional requirements, by regulation, the Commission shall have the authority to promulgate additional regulations, in the manner provided by law, in furtherance of this Act, including, but not limited to the establishment of reasonable safeguards in the transportation of hazardous materials including, as the Commission finds

appropriate, the use of escort vehicles and the temporary prohibition of transportation of hazardous materials during unsafe conditions; the establishment of a system requiring notification of public authorities prior to transportation of hazardous materials; establishment of a system of authorized and unauthorized routes through the State for the transportation of hazardous materials; adoption by reference of laws or regulations of the United States; and maintenance of records, and is empowered to enforce this Act, by any and all civil or criminal remedies provided by law; provided, however, that all portions of this Act, except this Section, shall be fully operable and effective without the enactment of regulations by the Commission provided further, that nothing contained within this Act or requirements imposed by it shall be construed so as to relieve any person from the necessity of complying with any applicable laws or regulations of the United States. All rules and regulations of any previous State agency responsible for enforcing this Act shall remain in full force until replaced or adopted by the Commission.

(b) No person or carrier shall transport or cause to be transported any hazardous material upon the public streets or highways or upon any railroad within this State without first obtaining a permit from the Department for such transportation. Permits shall be issued under such terms and conditions as the Commission may prescribe under the provisions of this Act. Permits shall be issued for a period of time not to exceed one (1) year and nothing in this Act shall preclude a permit from being reviewed and modified at any time during its terms. The Department may revoke permits issued hereunder for failure of the permittee to comply with the terms and conditions of the permit, the rules and regulations of the Commission applicable thereto, or the provisions of this Act. Any person who is denied a permit by the Department or who has a permit revoked or modified shall be afforded an opportunity for a hearing by the Commission in connection therewith upon proper written application made within thirty (30) days after service of notice of permit denial, revocation or modification.

(c) The Commission shall have the authority to establish a schedule of fees to recover the costs to the Department of processing permit applications and permit renewals, of developing safe routes for transporting hazardous materials, and of enforcing the provisions of this Act. All fees collected under this Act shall be deemed a "special revenue" to be deposited in the State Treasury to the credit of the State Highway and Transportation

Department Fund."

SECTION 3. Section 5 of Act 421 of 1977, as amended, the same being Arkansas Statute 76-2905, is hereby amended to read as follows:

"Section 5. The enforcement personnel of the Department, the Arkansas Highway Police Division, and the Arkansas State Police and the enforcement personnel of the Arkansas Transportation Commission shall have the authority to enforce the provisions of this Act."

SECTION 4. Section 6 of Act 421 of 1977, as amended, the same being Arkansas Statute 76-2906, is hereby amended to read as follows:

"Section 6. It shall be unlawful for any person to knowingly (a) transport or cause to be transported within this State hazardous material in an immediate container which does not bear a label which provides an adequate warning;

(b) transport or cause to be transported within this State hazardous material in an immediate container without carrying adequate emergency equipment;

(c) transport or cause to be transported within this State a hazardous material in a container other than an adequate immediate container;

(d) fail to utilize said adequate emergency equipment promptly and properly, to the extent possible without serious risk of personal injury, to deal with the escape of a hazardous material from its immediate container, when said person is the operator of the transporting equipment;

(e) fail to notify the Arkansas Highway Police or the Department, as promptly as reasonably possible, of the escape of a hazardous material from its immediate container, when said person is the carrier or is the operator of the transporting equipment;

(f) violate any regulation promulgated by the Commission pursuant to this Act."

SECTION 5. Section 7 of Act 421 of 1977, as amended, the same being Arkansas Statute 76-2907, is hereby amended to read as follows:

"Section 7. (a) The provisions of subsections (a), (b), (c), and (d) of Section 6 of this Act shall not apply to persons while operating farm vehicles with less than 20,000 pounds gross vehicle weight, where such vehicles are

used in the distribution or application of hazardous materials in immediate farming operations.

(b) The provisions of subsection (e) of Section 6 of this Act shall not apply to persons while operating farm vehicles of whatever size upon agricultural land owned, leased or rented by said person or their employers.

(c) The provisions of Section 6 of this Act shall not apply to persons directly engaged in the application of pesticides or rodenticides on behalf of residential, commercial, industrial, and agricultural customers under a license for such activity issued by the Arkansas State Plant Board."

SECTION 6. Subsection (e) of Section 4 of Act 406 of 1979, as amended, the same being Arkansas Statute 82-4204(e), is hereby amended to read as follows:

"(e) To adopt, after notice and public hearing, promulgate, modify, repeal, and enforce rules and regulations for the collection, generation, storage, disposal, recovery, and treatment of hazardous wastes and to coordinate with the Arkansas State Highway Commission on establishing rules and regulations on transportation of hazardous wastes as may be necessary or appropriate to implement or effectuate the purposes and intent of this Act and the powers and duties of the Department hereunder, including, but not limited to, rules and regulations for:

(1) 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 State Highway Commission;

(2) establishing standards and procedures for the safe operation and maintenance of facilities;

(3) 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, disposal, recovery or treatment of incompatible wastes together;

(4) the reporting of the generation, storage, transportation, recovery, treatment, or disposal of hazardous wastes;

(5) establishing standards and procedures for the certification of supervisory personnel at hazardous waste treatment or disposal facilities or sites as required under Section 5(g)(3) hereof;

(6) aiding the Arkansas State Highway Commission in establishing a manifest system for the transport of hazardous wastes and in prohibiting the receipt of hazardous wastes at storage, processing, recovery, disposal, or transport facilities or sites without a properly completed manifest."

SECTION 7. Subsections (a) and (b) of Section 5 of Act 406 of 1979, as amended, the same being Arkansas Statute 82-4205(a) and (b), is hereby amended to read as follows:

"(a) No person shall construct, substantially alter, or operate any hazardous waste treatment or disposal facility or site, nor shall any person store, treat, or dispose of any hazardous waste without first obtaining a permit from the Department for such facility, site, or activity. No person shall transport any hazardous wastes without first obtaining a permit from the Arkansas State Highway and Transportation Department for such activity. Persons who construct, substantially alter or operate a facility which generates hazardous wastes shall be subject to the reporting requirements of the Act, but shall not be required to obtain a permit under this Act unless such person also stores, transports, treats or disposes of hazardous wastes.

(b) (1) Permits for storing, treating, or disposing of hazardous wastes shall be issued under such terms and conditions as the Department may prescribe under the provisions of this Act.

(2) Permits for transporting hazardous wastes shall be issued under such terms and conditions as the Arkansas State Highway Commission may prescribe under the provisions of this Act."

SECTION 8. Section 7 of Act 406 of 1979, as amended, the same being Arkansas Statute 82-4207, is hereby amended to read as follows:

"Section 7. Following notice and public hearing, the Arkansas State Highway Commission, in consultation with the Department, shall issue rules and regulations for the transportation of hazardous waste. Such rules and regulations shall be consistent with applicable rules and regulations issued by the United States Department of Transportation and with any rules, regulations, and standards issued by the Department pursuant to this Act. The Arkansas State Highway and Transportation Department shall be responsible for enforcing these rules and regulations on the transportation of hazardous wastes. The Arkansas State Highway Commission shall comply with this Section within one

(1) year after the effective date of this Act. The provisions of this Section shall apply equally to those persons transporting hazardous wastes generated by others and to those transporting hazardous wastes they have generated themselves, or combinations thereof. The Arkansas State Highway and Transportation Department shall have the full authority as provided in Sections 10, 12, and 13 to the Department to enforce those provisions of this Act that deal with the transportation of hazardous wastes."

SECTION 9. All laws and parts of laws in conflict with this Act are hereby repealed.

