

US EPA ARCHIVE DOCUMENT

82-4106. Reports — Advisory authority.

The Council shall report its findings and recommendations to the Governor. The Council's authority with respect to the above matters shall be advisory only. [Acts 1979, No. 246, § 6; p. 512; 1979, No. 679, § 6, p. 1456.]

Compiler's Notes. Section 6 of Acts 1979, No. 246 and section 6 of Acts 1979, No. 679 were identical and have been compiled together.

Emergency. Section 9 of Acts 1979, No. 246 and § 9 of Acts 1979, No. 679, read: "Whereas, the State of Arkansas ranks second in the nation in its elderly population and it is imperative to the health and well-being of the citizens of Arkansas that immediate steps be taken

to prevent premature commitments to institutions, and this Act is necessary to establish the Council and provide immediate recommendations for initial improvements in home health care, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage."

Acts 1979, No. 246 was approved March 1, 1979, and Acts 1979, No. 679 was approved April 2, 1979.

CHAPTER 42

HAZARDOUS WASTE MANAGEMENT

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82-4201. Short title.

This Act [§§ 82-4201 — 82-4216] may be cited as the Arkansas Hazardous Waste Management Act of 1979. [Acts 1979, No. 406, § 1, p. 765.]

Cross-References. Low-level radioactive waste, §§ 82-4401 — 82-4405. Transportation of hazardous materials, §§ 76-2901 — 76-2908.

§2-4202. Purpose.

It is the purpose of this Act [§§ 82-4201 — 82-4216] and it is hereby declared to be the policy of this State (a) to protect the public health and safety, the health of living organisms and the environment, from the effects of the improper, inadequate, or unsound management of hazardous wastes; (b) to establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous wastes; (c) to assure the safe and adequate management of hazardous wastes within this State; (d) to qualify the Department of Pollution Control and Ecology to adopt, administer, and enforce a hazardous waste program pursuant to the Federal Resource Conservation and Recovery Act of 1976 (Public Law 94-580 approved October 21, 1976) [42 U.S.C. §§ 6901 — 6987], (e) and to afford the people of the State of Arkansas a voice in the permitting of hazardous waste facilities within their respective counties. [Acts 1979, No. 406, § 2, p. 765.]

Compiler's Notes. Section 7 of Acts 1981, No. 523 read: "SECTION 7. All laws and parts of laws in conflict with this Act are hereby repealed; provided, however, that this Act shall not repeal Act 472 of 1949, as amended, the same

being Arkansas Statute 82-1902, et seq., or Act 406 of 1979, the same being Arkansas Statute 82-4201, et seq., either in whole or in part."

The words in parentheses so appeared in the law as enacted.

§2-4203. Definitions.

For purposes of this Act [§§ 82-4201 — 82-4216],

(a) "Department" means the Arkansas Department of Pollution Control and Ecology.

(b) "Director" means the Director of the Department.

(c) "Commission" means the Arkansas Commission on Pollution Control and Ecology within the Department.

(d) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water in whatever manner so that such hazardous waste or any constituent thereof might or might not enter the environment or be emitted into the air, or discharged into any waters, including groundwaters.

(e) "Generation" means the act or process of producing waste materials.

(f) "Hazardous Waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may in the judgment of the Department (1) cause or significantly contribute to an increase in mortality or an increase in

serious irreversible or incapacitating reversible illness; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise improperly managed. Such wastes include, but are not limited to, those which are radioactive, toxic, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means.

(g) "Hazardous Waste Management" means the systematic control of the generation, collection, source separation, storage, transportation, processing, recovery, disposal and treatment of hazardous waste.

(h) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transport.

(i) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint stock company, state agency, government instrumentality or agency, institution, county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized.

(j) "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes, provided, however, that storage by means of burial shall be deemed to constitute disposal within the meaning of this Act.

(k) "Transport" means the movement of wastes from the point of generation to any intermediate points, and finally to the point of ultimate storage or disposal.

(l) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste, so as to neutralize such waste or so as to render such waste less hazardous, safer for transport, amenable to recovery, amenable to storage, amenable to disposal, or reduced in volume.

(m) "Facility" means any land and appurtenances, thereon and thereto, used for the treatment, storage, and/or disposal of hazardous waste.

(n) "Treatment Facility" means a location at which waste is subjected to treatment and may include a facility where waste has been generated.

(o) "Site" means any real property located within the boundary of the State of Arkansas contemplated and/or later acquired for the purpose of but not limited to landfills or other facilities to be used for treatment, storage, disposal, or generation of hazardous wastes. [Acts 1979, No. 406, § 3, p. 765.]

8-7-209
§2-4204. Powers and duties.

The Department shall have the following powers and duties:

(a) To administer and enforce all laws, rules and regulations relating to the generation, storage, treatment, transportation, recovery, and disposal of hazardous wastes;

(b) To conduct and publish such studies of hazardous waste management in this State as shall be deemed appropriate, including, but not limited to, a description of the sources of hazardous waste generated within the State, the types and quantities of such waste, a description of current hazardous waste management practices and costs, including treatment, recovery, and disposal;

(c) To develop, publish and implement plans in accordance with the provisions of this Act [§§ 82-4201 — 82-4216] for the safe and effective management of hazardous wastes within this State, including, but not limited to, the establishment of criteria for the identification of those locations within the State which are suitable for establishment of hazardous waste treatment or disposal facilities or sites and those locations which are not suitable for such purposes;

(d) To establish criteria for the determination of whether any waste or combination of wastes is hazardous for purposes of this Act and to identify and specify wastes or combination of wastes as being hazardous;

(e) To adopt, after notice and public hearing, promulgate, modify, repeal, and enforce rules and regulations for the collection, generation, storage, transportation, disposal, recovery, and treatment 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 Transportation 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) [§ 82-4205(g)(3)] hereof;

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

(f) To issue, continue in effect, revoke, modify, or deny under such conditions as it may prescribe, permits for the establishment, construction, operation, and/or maintenance of hazardous waste treatment or disposal facilities or sites, as more particularly prescribed by Section 5 [§ 82-4205] of this Act;

(g) To make such investigations and inspections and to hold such hearings, after notice, as it may deem necessary or advisable for the discharge of its duties hereunder and to insure compliance with this Act, and any orders, rules, and regulations issued pursuant thereto.[:]

(h) To make, issue, modify, revoke, and enforce orders, after notice and hearing, prohibiting violation of any of the provisions of this Act or of any rules and regulations issued pursuant thereto or any permit issued thereunder, and requiring the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this Act;

(i) To institute proceedings in the name of the Department in any court of competent jurisdiction to compel compliance with, and to restrain any violation of the provisions of this Act and/or any rules, regulations and orders issued pursuant thereto or any permit issued thereunder, and to require the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this Act. In any civil action in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the requested relief not be granted, nor that the remedy at law is inadequate.[:]

(j) To initiate, conduct and support research, demonstration projects and investigations and coordinate all state agency research programs pertaining to hazardous waste management, and to establish technical advisory committees to assist in the development of procedures, standards, criteria, and rules and regulations, the members of which may be reimbursed for travel expenses;

(k) To establish policies and standards for effective hazardous waste management;

(l) To establish standards and procedures for the certification of personnel to operate hazardous waste treatment or disposal facilities;

(m) In addition to the foregoing, the Department shall have and may use in the administration and enforcement of this Act all of the powers which it has under other acts administered by it, including the Arkansas Water and Air Pollution Control Act (Section 82-1901 et seq., Ark. Stats. Ann.) and the Arkansas Solid Waste Management Act (Section 82-2701 et seq., Ark. States. [Stats.] Ann.). [Acts 1979, No. 406, § 4, p. 765.]

Compiler's Notes. The words in parentheses so appeared in the law as enacted. The bracketed semicolons in subdivisions (g) and (i) and the bracketed abbreviation "Stats." in subdivision (m) were inserted by the compiler.
 Cited: United States v. Vertac Chem. Corp., 489 F. Supp. 870 (E.D. Ark. 1980).

82-4205. Permits.

8-7-2170 (a) No person shall construct, substantially alter, or operate any hazardous waste treatment or disposal facility or site, nor shall any person store, transport, treat, or dispose of any hazardous waste without first obtaining a permit from the Department for such facility, site, or activity. Persons who construct, substantially alter or operate a facility which generates hazardous wastes shall be subject to the reporting requirements of the Act [§§ 82-4201 — 82-4216], but shall not be required to obtain a permit under this Act unless such person also stores, transports, treats or disposes of hazardous wastes.

8-7-2160 (b) Permits shall be issued under such terms and conditions as the Department may prescribe under the provisions of this Act, and under such terms and conditions as the Arkansas Transportation Commission may prescribe for the transportation of hazardous wastes.

(c) Facilities required to have a permit under this Act or, which are operating under terms of permits issued under the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended) [§§ 82-1901 — 82-1907, 82-1931 — 82-1943] or the Arkansas Solid Waste Management Act (Act 237 of 1971) [§§ 82-2701 — 82-2712] as of the date of enactment of this Act, may continue in operation until such time as a permit is issued under the provisions of this Act by the Department, provided that the owner or operator of such facility has made application on forms provided by the Department for such permit within six [6] months of the date of enactment of this Act [March 14, 1979].

(d) Permits shall be issued for a period not to exceed five [5] years, and shall be subject to renewal by the Department upon a showing that the facility has been operated in accordance with the terms of the permit, the rules and regulations applicable to such facility, and compliance with all other provisions of this Act.

8-7-221 (e) Any permit issued hereunder shall be subject to revocation for failure of the permittee to comply with the terms and conditions of the permit, the rules and regulations of the Department applicable thereto, or the provisions of this Act. Any person who is denied a permit by the Director or who has such permit revoked or modified shall be afforded an opportunity for a hearing by the Commission in connection therewith upon written application made within thirty (30) days after service of notice of such denial, revocation, or modification.

8-7-218 (f) No permit shall be issued by the Department for any facility unless the Department, after opportunity for public comment, has

determined that the facility has been designed and will be operated in such manner that any emissions from the facility will comply with the provisions of this Act, the standards and regulations issued pursuant to this Act, and all applicable State and Federal standards and regulations concerning air and water quality and that the transfer, handling, and storage of materials within the facility will not cause conditions which would violate State and Federal standards concerning worker safety or create unreasonable hazards to the environment or to the health and welfare of the people living and working in or near such facility. No permit shall be issued by the Department for any commercial disposal or storage facility off the site where the hazardous waste is generated until the Department has adopted rules, regulations, standards and procedures pursuant to Section 4 [§ 82-4204]. The rules, regulations, standards, procedures or other requirements adopted and imposed by the Department shall not be less stringent than the regulations promulgated or revised by the Environmental Protection Agency pursuant to the Federal Resource Conservation and Recovery Act of 1976 [42 U.S.C. §§ 6901-6987]. Pending the effective date of federal regulations promulgated by the Environmental Protection Agency, the Department shall use the proposed regulations published by the Environmental Protection Agency as minimum guidelines in adopting any interim rules, regulations, standards and procedures.

8-7-219 (g) No permit shall be issued for any commercial hazardous waste treatment, storage or disposal facility unless that facility meets such terms and conditions as the Department may direct, including, but not limited to,

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

(2) Evidence of financial responsibility in such form and amount as the Department may determine to be necessary to insure that, upon abandonment, cessation, or interruption of the operation of the facility, all appropriate measures are taken to prevent present and future damage to the public health and safety and to the environment;

8-7-219(3)
(3)(A)
3/2 (3) Evidence that the personnel employed at the hazardous waste treatment or disposal facility meet such qualifications as to education and training as the Department may determine to be necessary to assure the safe and adequate operation of the facility. Persons charged with the direct supervision of the operation of any facility must be certified by the Department as having such qualifications after a review of the types, properties, and volume of hazardous waste to be treated or disposed of at the facility. The Department may require the recertification of supervisory personnel where there is any significant change in the types or properties of hazardous waste being treated or disposed of in any facility;

(4) Evidence of an appropriate preventive maintenance program, spill prevention plan, safety procedures and contingency plans which

contingency plans have been developed in consultation with the fire department having jurisdiction and by the Mayor or City Manager of the municipality or by the County Judge of the county in which the facility is to be located.

(5) Evidence that the location of the facility is consistent with the siting criteria established by the Department as provided in Section 4(c) of this Act [§ 82-4204(c)]. The provisions of this subsection (5) shall not apply to treatment facilities which began operation prior to the date of enactment of this Act [March 14, 1979] and which have an existing operating permit from the Department, or to any subsequent modifications to such facilities, provided that the owner of such facility can demonstrate that such modifications do not materially increase the degree of hazards associated with such facility.

(6) Evidence of such forms of assurance, including full fee ownership of lands, and all mineral rights thereto, to ensure that the owner of any hazardous waste landfill has the legal authority to commit such landfill to perpetual security.

(h) No hazardous waste landfill disposal facility off the site of generation shall be located within one-half (½) mile of any occupied dwelling, unless the applicant shall affirmatively demonstrate and the Department shall specifically find that, because of the nature and amounts of the materials to be placed in such facility, a lesser distance will provide adequate margins of safety even under abnormal operating conditions.

(i) The Department shall have authority to establish a schedule of fees to recover the costs of processing permit applications and permit renewal proceedings, on-site monitoring, the certification of personnel to operate hazardous waste treatment and disposal facilities, and such other activities of Department personnel which are reasonably necessary to assure that permitted facilities are being operated in accordance with the provisions of this Act and which reasonably should be borne by the permittee.

8-7-217 (j) No permit shall be issued by the Department or Commission for any commercial hazardous waste treatment, storage, or disposal facility unless 30-day advance notice of a hearing has been placed in the largest newspaper published in the county in which a facility or facilities is located or proposed to be located, as well as published in the largest newspaper published in the adjoining counties. Provided, if there is no newspaper published in any of the counties so affected the notice shall be published in the newspaper(s) having the largest circulation in such county or counties.

(k) No permit shall be issued for non-commercial hazardous waste treatment, storage, or disposal facilities except under the terms of regulations of the Department which conform to the provisions of Section 3005 of the Federal Resource Conservation and Recovery Act (PL 94-580) [42 U.S.C. § 6925]. [Acts 1979, No. 406, § 5, p. 765.]

82-4206. Consideration of varying conditions, coordinated procedures and integrated administration.

(a) In administering the provisions of this Act [§§ 82-4201 — 82-4216], the Department may adopt and give appropriate effect to variations within this State in climate, geology, population density, and such other factors as may be relevant to the management of hazardous wastes, the establishment of standards and permit conditions, and to the siting of permitted facilities.

(b) To the extent practicable, the rules and regulations and procedures adopted by the Department pursuant to this Act shall be consistent with other environmentally related rules, regulations, and procedures of the Department. In administering the provisions of this Act and of all other acts under the administration of the Department, the Department and Commission shall coordinate and expedite the issuance of permits required by an applicant under one [1] or more acts, to the end of eliminating insofar as practicable any duplication of unnecessary time and expense to the applicant and the Department.

(c) The Department shall integrate all provisions of this Act with the appropriate provisions of all other acts which grant regulatory authority to the Department for purposes of administration and enforcement, and shall avoid duplication to the maximum extent practicable. [Acts 1979, No. 406, § 6, p. 765.]

Compiler's Notes. As enacted the section heading of this section read, "Consideration of varying conditions; and providing for coordinated procedures and integrated administration."

82-4207. Transportation of hazardous waste.

Following notice and public hearing, the Arkansas Transportation 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 [§§ 82-4201 — 82-4216]. The Arkansas Transportation Commission shall comply with this Section within one [1] year after the effective date of this Act [March 14, 1979]. 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. [Acts 1979, No. 406, § 7, p. 765.]

Cross-References. No civil liability for good samaritans assisting at hazardous materials accidents, §§ 82-4225 — 82-4227.

82-4208. Imminent hazard.

Notwithstanding any other provisions of this Act [§§ 82-4201 — 82-4216], the Director of the Department, upon finding that the storage, transportation, treatment, or disposal of any waste may present an imminent and substantial hazard to the health of persons or to the environment and that an emergency exists requiring immediate action to protect the public health and welfare, he may, without notice or hearing, issue an order reciting the existence of such an imminent hazard and emergency and requiring that such action be taken as he determines to be necessary to protect the health of such persons and/or the environment and to meet the emergency. The order of the Director may include, but is not limited to, directing the operator of the treatment or disposal facility or site, or the custodian of the waste, which constitutes such hazard, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes such hazard and, with respect to a facility or site, may order cessation of operation. Any person to whom such order is directed shall comply therewith immediately, but, on written application to the Director within ten [10] days of the issuance of such order, shall be afforded a hearing before the Commission within ten (10) days after receipt of said written request. On the basis of such hearing, the Commission shall continue such order in effect, or revoke or modify it. [Acts 1979, No. 406, § 8, p. 765.]

Cited: United States v. Vertac Chem. Corp., 489 F. Supp. 870 (E.D. Ark. 1980).

8-7-213

82-4209. Procedure.

The procedure of the Department and Commission for issuance of rules and regulations, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions, and related matters shall be as provided in Part I of the Arkansas Water and Air Pollution Control Act, as amended, including but not limited to Sections 82-1904 (11) and 82-1906, Ark. Stats. Ann. provided such is not in conflict with the provisions set forth in this Act [§§ 82-4201 — 82-4216]. [Acts 1979, No. 406, § 9, p. 765.]

82-4210. Department designated state agency for participation in federal program — Interstate cooperation.

(a) The Department is hereby designated as the official agency for the State for all purposes of the Federal Resource Conservation and Recovery Act of 1976 (Public Law 94-580 approved October 21, 1976) [42 U.S.C. §§ 6901 — 6987], as it now exists or may hereafter be amended, and for the purpose of such other State or Federal legislation as has or may be hereafter enacted to assist in the management of hazardous wastes.

(b) The legislature of this State encourages cooperative activities by the Department with other states for the improved management of hazardous wastes, and so far as is practicable, uniform State laws relating to the management of hazardous wastes, and compacts between this and other states for the improved management of hazardous wastes. The Department may enter into agreements with the responsible authorities of the United States and/or of other states, subject to approval by the Governor, relative to policies, methods, means, and procedures to be employed in the management of hazardous wastes not inconsistent with the provisions of this Act [§§ 82-4201 — 82-4216] and may carry out such agreements. [Acts 1979, No. 406, § 10, p. 765.]

Compiler's Notes. As enacted the section heading of this section read, "Department designated state agency for participation in federal program; and interstate cooperation."

The words in parentheses in subsection (a) so appeared in the law as enacted.

8-7-225
82-4211. Maintaining records, furnishing information, and permitting examinations and surveys.

(a) The owner or operator of any permitted facility or site shall establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods, take such samples, and perform such tests, and provide such other information to the Department as the Director may reasonably require.

(b) The Department, or any authorized employee or agent thereof, may examine and copy any book, papers, records, or memoranda pertaining to the operation of the facility or site.

(c) The Department, or any authorized employee or agent thereof, may enter upon any property, public or private, for the purpose of obtaining information or conduction [conducting] surveys or investigations necessary or appropriate for the purposes of this Act [§§ 82-4201 — 82-4216].

(d) Any records, reports, or information obtained under this Act [§§ 82-4201 — 82-4216] and any permits, permit applications, and related documentation shall be available to the public for inspection and copying; provided that upon a showing satisfactory to the Director that such records, reports, permits, documentation, or information, or any part thereof would, if made public, divulge methods or processes entitled to protection as trade secrets, the Director shall consider, treat, and protect such records, reports, or information as confidential. As necessary to carry out the provisions of this Act, information afforded confidential treatment may be transmitted under a continuing claim of confidentiality to other officers, or employees of the State or of the United States, provided that the owner or operator of the facility to which such information pertains is informed of such transmittal and provided further that such infor-

mation has been acquired by the Department under the provision of this Act. The provisions of this Section shall not be construed to limit the Department's authority to release confidential information during emergency situations. Any violation of this subsection shall be unlawful and constitute a misdemeanor. [Acts 1979, No. 406, § 11, p. 765; 1983, No. 809, § 1, p. —.]

Compiler's Notes. The bracketed word "conducting" in subsection (c) was inserted by the compiler.

Amendments. The 1983 amendment, in the second sentence of subsection (d), substituted "claim" for "restriction,"

added "or" preceding "employees," deleted "or authorized representatives" following "employees," and substituted "of" for "at least two weeks prior to" preceding "such transmittal."

82-4212. Unlawful acts.

It shall be unlawful for any person:

(a) to violate any provisions of this Act [§§ 82-4201 — 82-4216] or of any rule, regulation, permit, or order adopted or issued under this Act;

(b) knowingly to make any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this Act, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this Act or any rules or regulations adopted pursuant thereto;

(c) to dispose of hazardous wastes at any disposal site or facility other than one for which a permit has been issued by the Department pursuant to this Act;

(d) to store, collect, transport, treat, or dispose of any hazardous waste contrary to the rules, regulations, permits, or orders issued under this Act or in such a manner or place as to create or as is likely to be created a public nuisance or a public health hazard or to cause or is likely to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, as amended (Section 82-1902 et seq., Ark. Stats. Ann.). [Acts 1979, No. 406, § 12, p. 765.]

NOTES TO DECISIONS

Escape of Dioxin.

Where the record showed that dioxin was escaping from the plant site in quantities that under an acceptable but unproved theory could be considered as teratogenic, mutagenic, fetotoxic, and carcinogenic, there was a reasonable medical concern over the public health,

and therefore the escape of dioxin into Rocky Branch Creek and Bayou Meto from the plant site constituted an imminent and substantial endangerment to the health of persons and was subject to abatement. *United States v. Vertac Chem. Corp.*, 489 F. Supp. 870 (E.D. Ark. 1980).

82-4213. Penalties.

(a) Any person who violates any provision of this Act [§§ 82-4201 — 82-4216] or commits any unlawful act thereunder or violates any rule, regulation or order of the Commission shall be guilty of a misdemeanor and upon conviction thereof, shall be subject to imprisonment for not more than one (1) year, or a fine of not more than Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment. Each day or part of a day during which such violation is continued or repeated shall constitute a separate offense. Any person who violates any provision of this Act or commits any unlawful act thereunder or violates any rule, regulation or order of the Commission and leaves the State or removes his person from the jurisdiction of this State shall be guilty of a felony and upon conviction thereof, shall be subject to imprisonment for not more than five (5) years, and a fine of not more than Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment. Each day or part of a day during which such violation was continued or repeated within the State shall constitute a separate offense.

(b) Any person who violates any provision of this Act, or the regulations issued pursuant to this Act, or who violates any condition of a permit issued hereunder, may in accordance with the regulations issued by the Commission be assessed a civil penalty by the Commission. Such penalty shall not exceed Twenty-Five Thousand Dollars (\$25,000.00) for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments provided that no civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing on such violation pursuant to Ark. Stat. Ann. 82-1906. Appeal of the Commission's decision may be taken in accordance with the appellate procedure specified in Ark. Stat. Ann. 82-1906. All civil penalties collected hereunder shall be deposited into the State Treasury as general revenues.

(c) The Department is authorized to institute a civil action in any court of competent jurisdiction to restrain any violation of, and to compel compliance with, provisions of this Act and of any rules, regulations, orders, or permits issued pursuant thereto, to require the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this Act and/or recover any expenses reasonably incurred by the Department in removing, correcting, or terminating any adverse effects resulting therefrom, including the cost of investigation, inspection, or survey establishing such violation or unlawful act and to recover payment to the State for any other expenses or actual damage resulting therefrom, and to recover civil penalties assessed pursuant to subsection (b) above. All expenses of the Department recovered hereunder shall be deposited in the operating fund of the Department for use in the administration of this Act.

(d) Any person who shall, except as permitted by law, willfully resist, prevent, impede, or interfere with the Director or any authorized employees or agents of the Department in the performance of duties pursuant to this Act shall be guilty of a misdemeanor and may, upon conviction, be punished by a criminal penalty of not more than One Thousand Dollars (\$1,000.00) or by imprisonment of or not more than thirty (30) days, or by both. [Acts 1979, No. 406, § 13, p. 765; 1983, No. 456, § 1, p. —.]

Amendments. The 1983 amendment, in the first sentence of subsection (a), added "violates any provision of this Act or" and "thereunder or violates any rule, regulation or order of the Commission"; added the third and fourth sentences in subsection (a); substituted the present language of subsection (b) for a former subsection (b) which read: "Any person who violates any provision of this Act or commits any unlawful act thereunder shall be subject to a civil penalty in such amount as the court shall find appropriate, not to exceed twenty-five thousand

dollars (\$25,000.00) per day of such violation, to the payment of any expenses reasonably incurred by the State in removing, correcting, or terminating any adverse effects resulting therefrom, including the cost of the investigation, inspection, or survey establishing such violation or unlawful act, and the payment to the State of reasonable compensation of any actual damage resulting therefrom"; and added subsections (c) and (d).

Cited: United States v. Vertac Chem. Corp., 489 F. Supp. 870 (E.D. Ark. 1980).

82-4214. Variances.

Where the application of, or compliance with, any rule or regulation(s) issued under this Act [§§ 82-4201 — 82-4216] would, in the judgment of the Commission, cause undue or unreasonable hardship to any person and not cause substantially adverse environmental effects, the Commission may issue a variance from such rule or regulation. In no case shall the duration of any such variance exceed one [1] year; renewals or extensions may be given only after opportunity for public comment on each such renewal or extension. [Acts 1979, No. 406, § 14, p. 765.]

Compiler's Notes. The letter "s" in parentheses by the compiler as sur-
the word "regulations" was enclosed in plusage.

82-4215. Existing rules, regulations, orders, permits, legal proceedings.

(a) All existing rules and regulations of the Department not inconsistent with the provisions of this Act [§§ 82-4201 — 82-4216] relating to subjects embraced within this Act shall remain in full force and effect until expressly repealed, amended, or superceded by the Commission provided, however, insofar as said rules and regulations do not conflict with the provisions of this Act.

(b) All orders entered, permits granted, and pending legal proceedings instituted by the Department relating to subjects embraced within this Act shall remain unimpaired and in full force and effect

until superceded by actions taken by the Department or Commission under this Act.

(c) No existing civil or criminal remedies, public or private, for any wrongful action shall be excluded or impaired by this Act.

(d) The provisions of this Act, and the rules and regulations promulgated pursuant to this act, shall govern if the same conflict with the provisions of the Arkansas Water and Air Pollution Control Act, as amended (Section 82-1902 et seq., Ark. Stats. Ann.), or the Arkansas Solid Waste Management Act (Section 82-2701 et seq., Ark. Stats. Ann.), or any action taken by the Department or Commission under said Acts.

(e) Any person adversely affected by a violation of this Act or of any rules, regulations, or orders issued pursuant thereto, shall have a private right of action for relief against such violation. [Acts 1979, No. 406, § 15, p. 765.]

82-4216. Venue for legal proceedings.

All legal proceedings affecting hazardous waste treatment and/or hazardous waste disposal facilities in this State shall be brought in the county in which the facility is located. [Acts 1979, No. 406, § 16, p. 765.]

Emergency. Section 19 of Acts 1979, No. 406, read: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that it is essential to the health, welfare and safety of the people of the State of Arkansas and to the minimizing of environmental damage that hazardous wastes be managed in an environmentally sound manner; that the knowledge and technology necessary for alleviating adverse health, environmental, and esthetic impacts resulting from current hazardous waste management and disposal practices are generally available at costs within the financial

capabilities of those who generate such wastes, but that such knowledge and technology are not widely used; that existing practices and laws are inadequate; that this Act and the implementation thereof are necessary to the accomplishment of the proper management of hazardous wastes and to the welfare of the State of Arkansas and her people. Therefore, an emergency is hereby declared to exist, and this Act, being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval." Approved March 14, 1979.

RESOURCE RECLAMATION

82-4217. Short title.

This Act [§§ 82-4217 — 82-4224] may be cited as the "Arkansas Resource Reclamation Act of 1979." [Acts 1979, No. 1098, § 1, p. 2266.]

82-4218. Legislative findings.

The Legislature of this State finds, and it is declared that:

(a) The disposal of hazardous wastes, although currently necessary for certain forms of hazardous wastes, represents an inefficient use of

natural resources and may present long-term threats to the environment and to the public health and safety;

(b) Technically and economically feasible treatment methods are becoming increasingly available and offer the advantages of complete destruction of such wastes or the recovery and reclamation of some, if not all, constituents of such wastes;

(c) In addition to the recovery or reclamation of natural resources treatment of hazardous wastes reduces the volume of hazardous wastes which must be disposed of and thereby reduces the associated threats to the environment and to the public health and safety;

(d) Interstate cooperation is necessary to assure that the volume of hazardous wastes which must be disposed of within the State is reduced through a comprehensive program which encourages and, where appropriate, requires the treatment of hazardous wastes; and

(e) The Hazardous Waste Management Act of 1979 [§§ 82-4201 — 82-4216] authorizes the Department of Pollution Control and Ecology to encourage the development of interstate agreements for the management of hazardous wastes and to enter into such agreements, with the concurrence of the Governor. [Acts 1979, No. 1098, § 2, p. 2266.]

82-4219. Declaration of policy.

The Legislature of this State declares that it is the policy of this State and the purpose of this Act [§§ 82-4217 — 82-4224] to:

(a) Establish a statewide program designed to protect society and the environment from the risks and burdens associated with the continued practice of disposing of those forms of hazardous wastes which could otherwise be treated;

(b) Encourage the development and utilization of techniques which result in the recovery, reclamation and conservation of resources of the State, including the reclamation or safeguarding of abandoned hazardous waste disposal sites; and

(c) Encourage interstate cooperation and interstate agreements which would provide a requisite balance of disposal and treatment facilities among the states and which would reduce the amount of hazardous wastes disposed of in the State, irrespective of the origin of such wastes. [Acts 1979, No. 1098, § 3, p. 2266.]

82-4220. Definitions.

As used in this Act [§§ 82-4217 — 82-4224], the term:

(a) "Act" means the Arkansas Resource Reclamation Act of 1979.[.]

(b) "Department" means the Department of Pollution Control and Ecology.[.]

(c) "Director" means the Director of the Department.[.]

(d) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof

may enter the environment or be emitted into the air, or discharged into any waters, including groundwaters, [.]

(e) "Facility" means a site, location, or building which is used for the purpose of treating or disposing of hazardous wastes.

(f) "Generation of Hazardous Wastes" means the act of producing hazardous wastes as a result of such operations as pollution control devices, industrial processes, hazardous waste treatment facilities, commercial enterprises, the generation of electricity, the production of steam or mechanical power, the formulation of pesticides, or from the release of hazardous materials into the environment as a result of accidents of inadequate disposal facilities.

(g) "Hazardous Wastes" means those wastes which are defined or classified as hazardous wastes by regulation of the Department, or by regulation of the United States Environmental Protection Agency.

(h) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint stock company, state agency, government instrumentality or agency, institution, county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized.

(i) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous wastes, so as to neutralize such wastes or so as to render such wastes less hazardous, safer for transport, amenable to recovery, amenable to storage, amenable to disposal, or reduce in volume. [Acts 1979, No. 1098, § 4, p. 2266.]

Compiler's Notes. The bracketed (c) and (d) were inserted by the compiler. periods at the end of subdivisions (a), (b),

82-4221. Powers and duties.

The Department shall have the following powers and duties:

(a) To enter into such agreements or compacts, between one [1] or more states or with the federal government, as may be necessary and appropriate to effectuate a program consistent with the purposes of this Act [§§ 82-4217 — 82-4224], provided that such agreements or compacts first receive the approval of the Governor;

(b) To adopt such regulations as may be necessary and appropriate to enforce within the State the terms of any interstate agreement or compact developed pursuant to the provisions of this Act;

(c) To limit by conditions of permit, and by the number of permits issued to hazardous waste disposal facilities, the amount of hazardous wastes that can be lawfully disposed of in the State during any one year, for the purpose of effectuating and implementing interstate agreements;

(d) To prohibit, by regulation or by condition of permit, the disposal of any hazardous wastes within the State unless the owner

or custodian of such wastes can demonstrate to the reasonable satisfaction of the Director that it is technically or economically infeasible for such wastes to be treated;

(e) To issue, continue in effect, revoke, modify, or deny, under such terms as it or the legislature may prescribe, permits for the establishment, construction, operation, and/or maintenance of hazardous waste treatment or disposal facilities;

(f) To adopt and enforce regulations which would require the owners of abandoned disposal sites to undertake such actions as are reasonable to prevent environmental contamination;

(g) To receive federal and private funds for the purpose of securing or reclaiming abandoned hazardous waste disposal sites in an environmentally safe manner;

(h) To encourage and to participate in studies, projects, and agreements for the purpose of identifying and evaluating improvements in hazardous waste treatment and disposal techniques; and

(i) In addition to the foregoing, the Department shall have and may use in the administration of this Act all of the powers which it has under other acts administered by it. [Acts 1979, No. 1098, § 5, p. 2266.]

82-4222. Unlawful acts.

It shall be unlawful for any person:

(a) To violate any provisions of this Act [§§ 82-4217 — 82-4224] or of any rule, regulation, permit or order issued under this Act;

(b) To transport hazardous wastes into the State for the purpose of disposal within the State, except as provided by interstate agreements established pursuant to the provisions of this Act;

(c) To dispose of hazardous wastes which originated in or which was transported from another state, except as provided by interstate agreements established pursuant to the provisions of this Act;

(d) To cause or permit the transportation of hazardous wastes into or out of the State of Arkansas without first reporting to the Department, in a manner established by regulations of the Department, the nature and amount of the wastes, the origin and destination of the wastes, and the means by which such wastes are proposed to be transported; and

(e) To cause or permit the transportation of hazardous wastes into or out of the State of Arkansas for disposal without first having received written authority from the Department. [Acts 1979, No. 1098, § 6, p. 2266.]

82-4223. Penalties.

(a) Any person who commits any unlawful act shall be guilty of a misdemeanor and upon conviction thereof, shall be subject to criminal penalties consisting of imprisonment for not more than one (1) year, or a fine of not more than ten thousand dollars (\$10,000.00), or by both such fine and imprisonment. Each day or part of a day during

which such violation is continued or repeated shall constitute a separate offense.

(b) Any person who violates any provision of this Act [§§ 82-4217 — 82-4224] or commits any unlawful act thereunder shall be subject to a civil penalty in such amount as the court shall find appropriate, not to exceed twenty-five thousand dollars (\$25,000.00) per day for such violation, to the payment of any expenses reasonably incurred by the State in removing, correcting, or terminating any adverse effects resulting therefrom, including the cost of the investigation, inspection, or survey establishing such violation or unlawful act, and the payment to the State of reasonable compensation of any actual damage resulting therefrom. [Acts 1979, No. 1098, § 7, p. 2266.]

82-4224. Industrial waste treatment facilities.

This Act [§§ 82-4217 — 82-4224] does not apply to an industrial waste treatment facility that discharges into a publicly owned treatment works provided that the industrial waste treatment facility and publicly owned treatment works complies with Arkansas Statutes 82-1901 et seq. [,] the Arkansas Water and Air Pollution Control Act [§§ 82-1901 — 82-1909, 82-1931 — 82-1943]. [Acts 1979, No. 1098, § 8, p. 2266.]

82-4225. Civil liability of those assisting at accidents — Definitions.

As used in this Act [§§ 82-4225 — 82-4227]:

(a) "Discharge" means spillage, leakage, seepage, fire, explosion, or other release.

(b) "Hazardous materials" means all materials and substances which are now or hereafter designated or defined as hazardous by law or regulation of this State or by law or regulation of the United States Government. [Acts 1983, No. 913, § 1, p. —.]

Compiler's Notes. As enacted the section heading of this section read "Definitions."

82-4226. No civil liability for damages from discharge of hazardous materials resulting from voluntary actions in accidents.

Notwithstanding any law to the contrary, no individual, partnership, corporation, association, or other entity shall be liable in civil damages as a result of acts taken (voluntarily and without compensation) in the course of rendering care, assistance, or advice with respect to an incident creating a danger to person, property, or the environment as a result of an actual or threatened discharge of hazardous materials, or in preventing, cleaning up, or disposing of or attempting to prevent, clean up or dispose of any such discharge. [Acts 1983, No. 913, § 2, p. —.]

Compiler's Notes. The words in parentheses so appeared in the law as enacted.

82-4227. Civil damages for gross negligence excepted.

This Act [§§ 82-4225 — 82-4227] shall not preclude liability for civil damages as the result of gross negligence. Reckless, willful, or wanton misconduct shall constitute gross negligence. [Acts 1983, No. 913, § 3, p. —.]

CHAPTER 43

RURAL MEDICAL SERVICES

SECTION.		SECTION.
82-4301.	Purpose.	82-4304. Purpose and intent.
82-4302.	Definitions.	82-4305. Application by rural physician for financial assistance grant.
82-4303.	Rural medical clinic revolving loan fund — Administration by board of finance.	82-4306. Administration of financial assistance program.

82-4301. Purpose.

The General Assembly is cognizant of an extreme shortage in the rural areas of this State of physicians and surgeons; that the providing of incentives to attract and encourage physicians and surgeons to establish their practices within a rural area of this State is essential to the protection of the public health, welfare and safety of the people of this State; that by providing a source of low interest funds, the State of Arkansas can offer incentives to physicians and surgeons to establish medical clinics in rural areas to meet the medical needs of thousands of citizens of this State; and that the procedures set forth in this Act [§§ 82-4301 — 82-4303] to provide loans to medical practitioners in rural areas for the establishment of medical clinics are deemed to be in the public interest, and essential to the preservation of the public health and safety in rural areas. [Acts 1979, No. 1093, § 3, p. 2248.]

Effective Date. Section 5 of Acts should take effect from and after July 1, 1979, No. 1093 provided that the act 1979.

82-4302. Definitions.

As used in this Act [§§ 82-4301 — 82-4303], the following words shall have the respective meanings shown therein unless the context hereof clearly indicates otherwise:

(1) "Board" shall mean the Board of Finance of the State of Arkansas;