

1 HB76
2 179741-1
3 By Representative Johnson (R)
4 RFD: Commerce and Small Business
5 First Read: 07-FEB-17
6 PFD: 02/01/2017

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, a centralized waste
9 treatment facility is required to receive a permit
10 from the Alabama Department of Environmental
11 Management (ADEM) and to post a performance bond or
12 other financial assurance in an amount sufficient
13 to close the facility if the owner or operator
14 ceases proper operation, abandons the facility, or
15 fails to properly maintain the facility. In
16 addition, each facility is required to charge a fee
17 of five percent of the costs of the facility to
18 treat industrial waste, industrial wastewater, or
19 other material. The proceeds of the fees are
20 required to be maintained in a fund by ADEM to pay
21 the costs of closing a facility under the similar
22 conditions as provided for the forfeiture of the
23 bond or other financial assurance.

24 This bill would further specify the
25 forfeiture of the bond or financial assurance and
26 repeal the provisions for fees. The bill would also

1 provide for the refund of fees collected prior to
2 the enactment of this bill.

3
4 A BILL
5 TO BE ENTITLED
6 AN ACT

7
8 To amend Sections 22-25C-1 and 22-25C-2 of the Code
9 of Alabama 1975, relating to centralized waste treatment
10 facilities permitted by the Department of Environmental
11 Management (ADEM); to further provide for the bond or
12 financial assurance required by ADEM from the owners or
13 operators and to delete the requirements for additional fees
14 based on the costs of the facility to treat waste and other
15 material in the facility; and to provide for refunds of fees
16 collected prior to the effective date of this act.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 22-25C-1 and 22-25C-2 of the
19 Code of Alabama 1975, are amended to read as follows:

20 "§22-25C-1.

21 "(a) Notwithstanding any provision of law, and
22 except as provided in Section 22-25C-2, the Alabama Department
23 of Environmental Management (ADEM), prior to the issuance of a
24 permit or prior to a modification of an existing permit, shall
25 require certain centralized waste treatment facilities, as
26 defined by federal effluent guidelines set forth at 40 CFR
27 Part 437, when applying for or modifying a permit for the

1 operation of a facility that processes or treats industrial
2 wastes, industrial wastewater, or used material to post a
3 performance bond or other financial assurance in an amount
4 sufficient to close the facility if the owner or operator
5 ceases proper operation of the facility, abandons the
6 facility, or fails to properly maintain the facility to ensure
7 compliance with state environmental regulations.

8 Notwithstanding the foregoing, this requirement shall not
9 apply to waste treatment facilities which treat waste only
10 from sources owned or operated by the owner of the waste
11 treatment facilities or which treats waste pursuant to a
12 contract at a waste treatment facility which also treats waste
13 from sources owned or operated by the owner.

14 "(b) The bond or other financial assurance ~~may~~ shall
15 be declared forfeited if required by ADEM when the owner or
16 operator abandons the facility, ceases operation of the
17 facility, or fails to properly maintain the facility to ensure
18 compliance with state environmental regulations and shall be
19 used for the purpose of closing the facility in compliance
20 with state environmental rules and to pay the costs of any
21 remediation required.

22 "(c) (1) The owner or operator shall have a minimum
23 of two detailed written estimates, in current dollars, of the
24 cost of hiring a third party to close a facility prior to
25 issuance of a permit or modification of a permit. The owner or
26 operator shall submit the closure cost estimates with the

1 permit application and submit a copy of the estimates with the
2 permit application.

3 "(2) The owner or operator shall re-evaluate the
4 closure cost estimate and the amount of financial assurance
5 required if changes to the closure plan or facility conditions
6 significantly increase the maximum cost of closure at any time
7 during the active life of the facility. The owner or operator
8 shall submit any updated cost estimates and documentation of
9 the increase in financial assurances prior to initiating
10 changes at the facility which would insignificantly increase
11 the maximum cost of closure at any time during the active life
12 of the facility.

13 "(d) Failure of the obligor of the bond or financial
14 assurance to provide service satisfactory to the department
15 shall constitute a cause of action for recovery in a civil
16 action at the instance of the department.

17 "§22-25C-2.

18 "~~(a) Each facility receiving a permit as provided in~~
19 ~~Section 22-25C-1 shall charge a fee that represents five~~
20 ~~percent of the costs of the facility to treat industrial~~
21 ~~waste, industrial wastewater, or other used material in the~~
22 ~~facility. The fee shall be remitted quarterly to the ADEM~~
23 ~~Centralized Waste Treatment Facility Rehabilitation Fund,~~
24 ~~which is hereby created. The fund shall be managed by ADEM for~~
25 ~~the purposes stated in Section 22-25C-1 requiring financial~~
26 ~~assurances upon the fund reaching a minimum threshold amount~~
27 ~~of ten million dollars (\$10,000,000).~~

1 ~~"Notwithstanding anything to the contrary contained~~
2 ~~herein, the fund created herein shall be used exclusively and~~
3 ~~solely for purposes of closing a facility if the owner or~~
4 ~~operator ceases proper operation of the facility, abandons a~~
5 ~~facility, or fails to properly maintain the facility to ensure~~
6 ~~compliance with state environmental regulations.~~

7 ~~"(b) Upon the fund reaching the threshold amount,~~
8 ~~the requirements of permit applicants to provide financial~~
9 ~~assurances shall be suspended. If the fund falls below the~~
10 ~~threshold amount at the end of any fiscal year, financial~~
11 ~~assurances of the permit applicant described in Section~~
12 ~~22-25C-1 shall be resumed until such time as ADEM determines~~
13 ~~that the threshold amount is restored to the fund.~~

14 ~~"(c) ADEM shall promulgate rules necessary to~~
15 ~~implement and administer the provisions of this chapter."~~

16 Section 2. Any fees collected pursuant to subsection
17 (a) of Section 22-25C-2, Code of Alabama 1975, prior to
18 amendment of the section by this act shall be refunded to the
19 owner or operator of the centralized waste management facility
20 that paid the fee.

21 Section 3. This act shall become effective
22 immediately following its passage and approval by the
23 Governor, or its otherwise becoming law.