

1 HB50  
2 125989-2  
3 By Representative Canfield  
4 RFD: Commerce and Small Business  
5 First Read: 01-MAR-11  
6 PFD: 02/25/2011

1  
2 ENROLLED, An Act,

3 To amend Sections 22-27-2 and 22-27-3, Code of  
4 Alabama 1975, relating to solid waste disposal; to remove an  
5 existing exemption from regulation for fly ash waste, bottom  
6 ash waste, boiler slag waste, and flue gas emission control  
7 wastes which result primarily from the combustion of coal or  
8 other fossil fuels at electric generating plants and authorize  
9 the regulation of those substances as a solid waste.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Sections 22-27-2 and 22-27-3, Code of  
12 Alabama 1975, are amended to read as follows:

13 "§22-27-2.

14 "For the purpose of this article, the following  
15 terms shall have the meanings respectively ascribed to them by  
16 this section:

17 "(1) AGENCY. Any controlling agency, public or  
18 private, elected, appointed, or volunteer utilizing methods  
19 approved by the health department or the department for the  
20 purpose of controlling and supervising the collection or  
21 management of solid wastes or recyclable materials.

22 "(2) ASHES. The solid residue from burning of wood,  
23 coal, coke, or other combustible material used for heating ~~or,~~  
24 from incineration of solid wastes, ~~but excepting solid~~  
25 ~~residue, the storage or disposition of which is controlled by~~

1 ~~other agencies~~ or for the production of electricity at  
2 electric generating plants.

3 "(3) COAL COMBUSTION BY-PRODUCTS. Fly ash, bottom  
4 ash, boiler slag, or flue gas emission control by-products  
5 which result primarily from the combustion of coal or other  
6 fossil fuels at electric generating plants.

7 "~~(3)~~ (4) COMPOSTING OR COMPOST PLANT. An officially  
8 controlled method or operation whereby putrescible solid  
9 wastes are broken down through microbic action to a material  
10 offering no hazard or nuisance factors to public health or  
11 well-being.

12 "~~(4)~~ (5) DEPARTMENT. The Alabama Department of  
13 Environmental Management.

14 "~~(5)~~ (6) DIRECTOR. The Director of the Alabama  
15 Department of Environmental Management or his or her designee.

16 "~~(6)~~ (7) DISCHARGE. The accidental or intentional  
17 spilling, leaking, pumping, emitting, emptying, or dumping of  
18 solid waste, including leachate, into or on any land or water.

19 "~~(7)~~ (8) DISPOSAL. The discharge, deposit,  
20 injection, dumping, spilling, leaking, or placing of any solid  
21 waste into or on any land or water so that the waste or any  
22 constituent thereof may enter the environment or be emitted  
23 into the air or discharged into any waters, including, but not  
24 limited to, ground waters.

1           "~~(8)~~ (9) FACILITY. All contiguous land, structures,  
2           and other appurtenances used for the processing, treatment,  
3           storage, or disposal of solid waste, or the recovery of  
4           recyclable materials from solid waste, whether or not  
5           authorized or permitted, including, but not limited to, waste  
6           disposal areas and waste disposed therein.

7           "~~(9)~~ (10) FINANCIAL ASSURANCE. A financial  
8           arrangement by the owner or operator of a municipal solid  
9           waste landfill which guarantees the availability of funds  
10          which may be used to close, provide post-closure care, or  
11          conduct corrective action at that facility if the owner or  
12          operator fails to properly execute his or her responsibilities  
13          under this article and any rules promulgated by the department  
14          for closure, post-closure care, or corrective action and the  
15          terms of any permit issued for operation of that facility.

16          "~~(10)~~ (11) GARBAGE. Putrescible animal and vegetable  
17          wastes resulting from the handling, preparation, cooking, and  
18          consumption of food, including wastes from markets, storage  
19          facilities, handling and sale of produce and other food  
20          products and excepting such materials that may be serviced by  
21          garbage grinders and handled as household sewage.

22          "~~(11)~~ (12) GENERATION. The act or process of  
23          producing solid waste. Solid waste shall be considered to be  
24          generated at the point that waste materials are first

1 discarded or collected, regardless of any subsequent materials  
2 recovery or recycling.

3 "~~(12)~~ (13) HAZARDOUS WASTES. Those wastes defined  
4 in, and regulated under, the Alabama Hazardous Waste  
5 Management and Minimization Act of 1978, as amended .

6 "~~(13)~~ (14) HEALTH DEPARTMENT. An approved county or  
7 district health department, including the Alabama State  
8 Department of Public Health and the affected state and county  
9 health department.

10 "~~(14)~~ (15) HEALTH OFFICER. The state or affected  
11 county health officer or his or her designee.

12 "~~(15)~~ (16) HOUSEHOLD WASTE. Any solid waste,  
13 including, but not limited to, garbage, trash, and sanitary  
14 waste in septic tanks derived from households, including  
15 single and multiple residences, hotels and motels, bunkhouses,  
16 ranger stations, crew quarters, campgrounds, picnic grounds,  
17 and day-use recreational areas. Sanitary waste in septic tanks  
18 shall be considered as household waste only when it is  
19 disposed in a landfill or unauthorized dump and its inclusion  
20 as a household waste shall in no way prohibit or supersede the  
21 authority of the board or the department to regulate onsite  
22 sewage systems or the management of sanitary waste in septic  
23 tanks.

24 "~~(16)~~ (17) INCINERATOR. A device designed to burn  
25 that portion of garbage and rubbish which will be consumed at

1 temperatures generally ranging 1,600 degrees Fahrenheit or  
2 over. The unburned residue from an incinerator, including  
3 metal, glass, and the like shall be called ashes.

4 "~~(17)~~ (18) INDUSTRIAL SOLID WASTE. Solid waste  
5 generated by manufacturing or industrial processes that is not  
6 a hazardous waste regulated under Chapters 22 to 30,  
7 inclusive, of this title.

8 "~~(18)~~ (19) INNOCENT LANDOWNER. An owner of real  
9 property upon which there is located an unauthorized dump and  
10 who meets all of the following conditions:

11 "a. The solid waste was disposed of on the property  
12 after the owner acquired title to the property or the waste  
13 was disposed of before the owner acquired title to the  
14 property and the owner lacked actual knowledge of the waste  
15 after conducting reasonable due diligence or title was  
16 acquired by bequest or devise.

17 "b. The owner did not have knowledge that the waste  
18 was being disposed of on the property or the owner took steps,  
19 including, but not limited to, posting signs to prevent  
20 disposal on the property.

21 "c. The owner did not participate in or consent to  
22 the disposal of solid waste on the property.

23 "d. The owner did not receive any financial benefit  
24 from the disposal of solid waste on the property.

1            "e. Title to the property was not transferred to the  
2 owner for the purpose of evading liability for operating an  
3 unauthorized dump.

4            "f. The person or persons responsible for disposing  
5 of the solid waste on the property, in doing so, were not  
6 acting as an agent for the owner.

7            "~~(19)~~ (20) LANDFILL. A method of compaction and  
8 earth cover of solid wastes other than those containing  
9 garbage or other putrescible wastes, including, but not  
10 limited to, tree limbs and stumps, demolition materials,  
11 incinerator residues, and like materials not constituting a  
12 health or nuisance hazard, where cover need not be applied on  
13 a per day used basis.

14            "~~(20)~~ (21) MATERIALS RECOVERY FACILITY. A solid  
15 waste management facility that provides for the extraction  
16 from solid waste of recyclable materials, materials suitable  
17 for use as a fuel or soil amendment, or any combination of  
18 those materials. A materials recovery facility shall be deemed  
19 to be a solid waste treatment facility.

20            "~~(21)~~ (22) MEDICAL WASTE. A solid waste or  
21 combination of solid wastes which because of its infectious  
22 characteristics may either:

23            "a. Cause, or significantly contribute to, an  
24 increase in mortality or an increase in serious irreversible  
25 or incapacitating reversible illness.

1            "b. Pose a substantial present hazard or potential  
2 hazard to human health or the environment when improperly  
3 treated, stored, transported, disposed, or otherwise managed.

4            "~~(22)~~ (23) MUNICIPAL SOLID WASTE LANDFILL. A  
5 discrete area of land or an excavation that receives household  
6 waste and that is not a land application unit, surface  
7 impoundment, injection well, or waste pile. A municipal solid  
8 waste landfill may also receive other types of solid wastes,  
9 such as commercial solid waste, nonhazardous sludge,  
10 conditionally exempt small quantity generator waste,  
11 industrial solid waste, construction/demolition waste, and  
12 rubbish. A municipal solid waste landfill is a sanitary  
13 landfill.

14            "~~(23)~~ (24) PERSON. An individual, trust, firm, joint  
15 stock company, corporation (including a government  
16 corporation), partnership, agent, agency, association, state,  
17 municipality, commission, political subdivision of a state, an  
18 interstate body, or other private or public legal entity.

19            "~~(24)~~ (25) PRIVATE SOLID WASTE MANAGEMENT FACILITY.  
20 A solid waste management facility that is operated exclusively  
21 by and for a private solid waste generator for the purpose of  
22 accepting solid waste generated on-site or by the permittee.

23            "~~(25)~~ (26) PUBLIC SOLID WASTE MANAGEMENT FACILITY. A  
24 solid waste management facility that accepts solid waste from  
25 the public generally or for a fee or any solid waste



1 management facility that is not a private solid waste  
2 management facility.

3 ~~"(26)"~~ (27) RECOVERED MATERIALS. Those materials  
4 which have known recycling potential; which can be feasibly  
5 recycled; which have been diverted or removed from the solid  
6 waste stream for recycling, whether or not requiring  
7 subsequent separation and processing; and which have a  
8 substantial portion that is consistently used in the  
9 manufacture of products which may otherwise be produced from  
10 raw or virgin materials. Recovered materials shall not include  
11 solvents or materials, except sawdust, bark, and paper  
12 materials that are destined for incineration, energy recovery,  
13 or any use which constitutes disposal. Recovered materials  
14 shall only be those materials for which during the calendar  
15 year, commencing on January 1, the amount of material recycled  
16 or diverted from the solid waste stream for recycling and  
17 transferred to a different site for recycling equals at least  
18 75 percent by weight or volume of the amount of that material  
19 accumulated at the beginning of the period.

20 ~~"(27)"~~ (28) RECOVERED MATERIALS PROCESSING FACILITY.  
21 A facility primarily engaged in the storage, processing, and  
22 resale or reuse of recovered materials. A recovered materials  
23 processing facility is not a solid waste management facility;  
24 however, any solid waste resulting from the operation of a  
25 facility shall be subject to all applicable laws and

1 regulations relating to solid waste and shall be deemed to be  
2 generated for purposes of reporting pursuant to solid waste  
3 reduction goals, at the point of collection of the recovered  
4 materials from which the solid waste resulted. A recovered  
5 material processing facility shall provide notification to the  
6 department according to rules adopted by the department.

7 ~~"(28)"~~ (29) RECYCLABLE MATERIALS. Those materials  
8 which are capable of being recycled, whether or not the  
9 materials have been diverted or removed from the solid waste  
10 stream.

11 ~~"(29)"~~ (30) RECYCLING. Any process by which materials  
12 are collected, separated, stored, recovered, or processed and  
13 reused or returned to use in the form of raw materials or  
14 products, but does not include the use of materials as a fuel,  
15 or for any use which constitutes disposal.

16 ~~"(30)"~~ (31) RUBBISH. Nonputrescible solid wastes,  
17 excluding ashes, consisting of both combustible and  
18 noncombustible wastes. Combustible rubbish includes paper,  
19 rags, cartons, wood, furniture, rubber, plastics, yard  
20 trimmings, leaves, and similar materials. Noncombustible  
21 rubbish includes glass, crockery, metal cans, metal furniture,  
22 and like materials which will not burn at ordinary incinerator  
23 temperatures, not less than 1,600 degrees Fahrenheit.

24 ~~"(31)"~~ (32) SANITARY LANDFILL. A controlled area of  
25 land upon which solid waste is deposited and is compacted and

1 covered with compacted earth each day as deposited, with no  
2 on-site burning of wastes, and so located, contoured, and  
3 drained that it will not constitute a source of water  
4 pollution as determined by the department.

5 " ~~(32)~~ (33) SOLID WASTE. Any garbage, rubbish,  
6 construction or demolition debris, ash, or sludge from a waste  
7 treatment facility, water supply plant, or air pollution  
8 control facility, and any other discarded materials, including  
9 solid, liquid, semisolid, or contained gaseous material  
10 resulting from industrial, commercial, mining, or agricultural  
11 operations or community activities, or materials intended for  
12 or capable of recycling, but which have not been diverted or  
13 removed from the solid waste stream. The term "solid waste"  
14 does not include ~~any materials referenced in subsection (c) of~~  
15 ~~Section 22-27-3,~~ recovered materials, solid or dissolved  
16 materials in domestic sewage, solid or dissolved material in  
17 irrigation return flows, or industrial discharges which are  
18 point sources subject to the National Pollutant Discharge  
19 Elimination System permits under the Federal Water Pollution  
20 Control Act, as amended, or the Alabama Waste Pollution  
21 Control Act, as amended; or source, special, nuclear, or  
22 by-product materials as defined by the Atomic Energy Act of  
23 1954, as amended. Also excluded from this definition are land  
24 applications of crop residues, animal manure, and ash  
25 resulting exclusively from the combustion of ~~fossil fuels or~~

1 wood during accepted agricultural operations, waste from  
2 silvicultural operations, or refuse as defined and regulated  
3 pursuant to the Alabama Surface Mining Act of 1969, Article 1,  
4 commencing with Section 9-16-1, of Chapter 16 of Title 9.

5 "~~(33)~~ (34) SOLID WASTE DISPOSAL FACILITY. Any  
6 landfill or part of a facility where final deposition of solid  
7 waste occurs and at which waste may remain after closure.

8 "~~(34)~~ (35) SOLID WASTE MANAGEMENT. The systematic  
9 control of solid waste including its storage, processing,  
10 treatment, recovery of materials from solid waste, or  
11 disposal.

12 "~~(35)~~ (36) SOLID WASTE MANAGEMENT FACILITY. Any  
13 solid waste volume reduction plant, transfer station, material  
14 recovery facility, or other facility, the purpose of which is  
15 the storage, treatment, utilization, processing, disposal, or  
16 recovery of materials from solid waste, or any combination  
17 thereof.

18 "~~(36)~~ (37) UNAUTHORIZED DUMP. Any collection of  
19 solid wastes either dumped or caused to be dumped or placed on  
20 any public or private property, whether or not regularly used,  
21 and not having a permit from the department. Abandoned  
22 automobiles, large appliances, or similar large items of solid  
23 waste shall be considered an unauthorized dump within the  
24 meaning of this article. The careless littering of a  
25 relatively few, smaller individual items such as tires,

1 bottles, cans, and the like shall not be considered an  
2 unauthorized dump, unless the accumulation of solid waste  
3 poses a threat to human health or the environment. An  
4 unauthorized dump shall also mean any solid waste disposal  
5 site which does not meet the regulatory provisions of this  
6 article.

7           "§22-27-3.

8           "(a) Generally. (1) The county commission or  
9 municipal governing body may, and is hereby authorized to,  
10 make available to the general public collection and disposal  
11 facilities for solid wastes in a manner acceptable to the  
12 department. The county commission or municipal governing body  
13 may provide such collection or disposal services by contract  
14 with private or other controlling agencies and may include  
15 house-to-house service or the placement of regularly serviced  
16 and controlled bulk refuse receptacles within reasonable  
17 (generally less than eight miles) distance from the farthest  
18 affected household and the wastes managed in a manner  
19 acceptable to the department.

20           "(2) Any county commission or municipal governing  
21 body providing services to the public under this article shall  
22 have the power and authority by resolution or ordinance to  
23 adopt rules and regulations providing for mandatory public  
24 participation in and subscription to such system of services.  
25 Such governing body may, in its discretion, submit the

1 question of requiring such mandatory public participation to a  
2 vote of the qualified electors of the county or municipality  
3 as the case may be. If such governing body submits the  
4 question to the voters, then the governing body shall also  
5 provide for holding and canvassing the returns of the election  
6 and for the giving notice thereof for two consecutive weeks in  
7 a paper of general circulation in the county. Every person,  
8 household, business, industry, or property generating solid  
9 wastes, garbage, or ash as defined in this section shall  
10 participate in and subscribe to such system of service unless  
11 granted a certificate of exception as provided in subsection  
12 (g). Provided, however, any individual, household, business,  
13 industry, or property generating solid wastes that were  
14 sharing service for a period of at least 6 months may continue  
15 to share service without filing for a certificate of  
16 exception. In the event such person, household, business,  
17 industry, or property owner who has not been granted a  
18 certificate of exception refuses to participate in and  
19 subscribe to such system of service, the county commission or  
20 municipal governing body may in addition to any other remedy  
21 provided in this article bring an appropriate civil action in  
22 circuit court to compel such participation and subscription.  
23 Except as provided in subsection (g), any person, firm, or  
24 corporation violating such rules and regulations shall be in

1 violation of this article and shall be punished as provided in  
2 Section 22-27-7.

3 "(3) Any household whose sole source of income is  
4 Social Security benefits shall be granted an exemption from  
5 the payment of any fees required under this article, provided  
6 the household seeking to claim the exemption shall present  
7 proof of income to the county health officer no later than the  
8 first billing date of any year in which the exemption is  
9 desired. The county health officer or his designee shall  
10 forward the exemption request and proof of income to the solid  
11 waste officer or municipal governing body upon receipt. The  
12 exemption shall apply only so long as the household's sole  
13 source of income is social security and shall be requested  
14 each year in which the exemption is desired. Additionally, the  
15 Legislature may, by local law, authorize the county commission  
16 to grant additional exemptions to households whose total  
17 income does not exceed 75% of the federal poverty level. Any  
18 person who knowingly provides false or misleading information  
19 in order to obtain an exemption shall be subject to the  
20 provisions of Section 22-27-7.

21 "(4) No county commission shall provide solid waste  
22 collection and disposal services within the corporate limits  
23 of a municipality without the express consent of the municipal  
24 governing body of such municipality nor shall any municipality  
25 provide solid waste collection and disposal services outside

1 its corporate limits without the express consent of the county  
2 commission of the county in which it is situated.

3 "(5) Any county providing door-to-door solid waste  
4 collection shall not reduce such service unless and until a  
5 letter has been sent to each resident or property or business  
6 owner receiving door to door service stating that such service  
7 will be reduced or changed and allowing at least 60 days for  
8 any resident, business owner, or property owner to call for a  
9 public hearing and for the county or municipality to hold such  
10 public hearing upon request.

11 "(6) Any provision of this article to the contrary  
12 notwithstanding, no person, household, business, industry, or  
13 property owner shall be required to pay any solid waste  
14 collection exemption or disposal fee chargeable under this  
15 article unless solid waste collection and disposal services  
16 for which such charge was made were actually made available to  
17 such person, household, business, industry, or property owner.

18 "(b) Solid waste officer. As used in this article,  
19 solid waste officer shall mean any county official or county  
20 employee or any official or employee of a solid waste disposal  
21 authority authorized under Section 11-89A-1 et seq. designated  
22 by the county commission to exercise the authority and perform  
23 the duties delegated by this article to such official and such  
24 officer shall have the same powers of enforcement against  
25 persons violating this article as do license inspectors with



1 regard to persons violating revenue laws as provided under  
2 Section 40-12-10 (i), (j), (k), and (n).

3 "(c) ~~Fly ash, etc.~~ As used in this article, the  
4 terms "solid wastes", "garbage", and "ash" do not include ~~fly~~  
5 ~~ash waste, bottom ash waste, boiler slag waste, or flue gas~~  
6 ~~emission control waste which result primarily from the~~  
7 ~~combustion of coal or other fossil fuels at electric~~  
8 ~~generating plants, nor shall such terms include~~ any drilling  
9 discharges from oil or natural gas operations.

10 "(d) Garbage disposal. Garbage and rubbish  
11 containing garbage shall be disposed of by sanitary landfill,  
12 approved incineration, composting, or by other means now  
13 available or which may later become available as approved by  
14 the department. The method chosen and used shall also meet the  
15 requirements of the health department for sanitation and the  
16 protection of public health.

17 "(e) Burning. No garbage or rubbish containing  
18 garbage or other putrescible materials or hazardous wastes  
19 shall be burned except in approved incinerators meeting the  
20 necessary temperature requirements and air pollution controls  
21 as now established or as may later be established. The open  
22 burning of rubbish shall be permitted only under sharply  
23 controlled circumstances where sanitary landfill or landfill  
24 is not feasible and not in proximity to sanitary landfill or

1 landfill operations where spread of fire to these operations  
2 may be a hazard in the opinion of the department.

3 "(f) Haulage. Trucks or other vehicles engaged in  
4 the business of hauling garbage and rubbish shall be so  
5 covered, secured, or sealed that there will be no loss during  
6 haulage to cause littering of streets and highways, or cause a  
7 nuisance or hazard to the public health.

8 "(g) Exception. (1) A person, household, business,  
9 industry, or any property owner may store, haul, and dispose  
10 of his or her own solid wastes on his or her land or  
11 otherwise, provided such storage, haulage, or disposal is  
12 accomplished pursuant to a certificate of exception as  
13 provided in this subsection. In order to obtain a certificate  
14 of exception, an application, an application fee, and plan  
15 must be filed with the county health officer or his or her  
16 designee in the case of household solid waste or with the  
17 department in the case of solid waste from business or  
18 industry, setting out the proposed method of storing, hauling,  
19 and disposing of solid waste so as to comply with rules and  
20 regulations adopted by the state or county boards of health or  
21 the department as appropriate and not create a public nuisance  
22 or hazard to the public health. The certification of exception  
23 application fee shall be established by the State Board of  
24 Health or the department, as the case may be, except that with  
25 regard to an individual household such fee shall be ten

1       dollars (\$10). The proceeds from such application fees are  
2       hereby appropriated to the State Board of Health or the  
3       department, as the case may be, to be used for the  
4       administration of this article. The county health officer or  
5       his or her designee or the department as appropriate shall  
6       investigate such application and plan and issue a certificate  
7       of exception within the time set by the State Board of Health  
8       or the department, as the case may be (not to exceed sixty  
9       days in the case of an individual household), if such proposal  
10      will, in such officer's or designee's or the department's  
11      judgment, comply with such rules and regulations and  
12      adequately prevent a public nuisance or hazard to public  
13      health. A certificate of exception granted under authority of  
14      this section shall be valid for the period established by the  
15      department, except that in the case of an individual household  
16      such period shall not exceed one year. The county health  
17      officer or his or her designee or the department shall notify  
18      the county commission or municipal governing body in writing  
19      of the intention to grant a certificate of exception and no  
20      such certificate of exception shall be granted for an  
21      individual household without prior written approval of the  
22      county commission or municipal governing body as the case may  
23      be.

24               "(2) Notwithstanding any other provision of this  
25      chapter to the contrary, no exception, exception fee, or any

1 other review, approval, or payment shall be required of any  
2 generator for the collection, handling, or disposal of its own  
3 solid waste using facilities or equipment owned by the  
4 generator, its corporate parent, affiliate, or subsidiary and  
5 duly permitted for such use by the Alabama Department of  
6 Environmental Management or its successor in function.

7 "(h) Coal combustion by-products. Upon the adoption  
8 and implementation of a federal regulatory program to govern  
9 the disposal of coal combustion by-products pursuant in whole  
10 or in part to Subtitle D of the Solid Waste Disposal Act, 42  
11 U.S.C. §6941 et seq., the department is authorized to develop  
12 and adopt rules as necessary to implement a state regulatory  
13 program consistent with the federal requirements. Until such  
14 federal program requirements take effect, the disposal of coal  
15 combustion by-products shall be subject to the applicable  
16 requirements of this article; provided, however, that a  
17 facility permitted by the department pursuant to Chapter 22 of  
18 this title as of the effective date of the act adding this  
19 subsection and thereafter may continue to operate without  
20 additional authorization by the department until federal  
21 requirements under the Solid Waste Disposal Act take effect.  
22 To the extent permissible under the federal program, the  
23 department shall allow beneficial uses of coal combustion  
24 by-products as an alternative to disposal as part of any  
25 adopted state program."

1                   Section 2. This act shall become effective  
2       immediately following its passage and approval by the  
3       Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 31-MAR-11.

Greg Pappas  
Clerk

Senate

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05-MAY-11

Passed