

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senators Dowd and Moore**
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A BILL ACT 1230 OF 1991
SENATE BILL 704

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For An Act To Be Entitled

"AN ACT TO ADD A SUBCHAPTER 2 TO TITLE 8, CHAPTER 1 OF THE ARKANSAS CODE OF 1987, ANNOTATED TO CLARIFY THE ROLES OF THE ARKANSAS COMMISSION ON POLLUTION CONTROL AND ECOLOGY AND THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY; AND FOR OTHER PURPOSES."

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

SECTION 1. Title 8, Chapter 1 of the Arkansas Code of 1987, Annotated, is hereby amended to add a new Subchapter 2 to read as follows:

"SUBCHAPTER 2. ADDITIONAL PROVISIONS.

8-1-201. Legislative Intent.

The General Assembly recognizes that since 1949, when the precursor of the Commission on Pollution Control and Ecology was first created, significant changes have occurred in the responsibilities charged to the State's environmental agency. This subchapter intends to clarify and supersede prior law which does not comport with this delineation of responsibility between the Department of Pollution Control and Ecology and the Commission on Pollution Control and Ecology.

8-1-202. Powers of the Director of the Department of Pollution Control and Ecology.

(a) The executive head of the Department of Pollution Control and Ecology shall be the Director of the Department of Pollution Control and Ecology, who shall be appointed by the Governor, with the consent of the Senate. The Director shall serve at the pleasure of the Governor.

(b) The Director shall be the executive officer and active administrator of all pollution control activities in the state.

1 As such, the Director's duties shall include:

2 (1) the administration of permitting, licensing, certification
3 and grants programs deemed necessary to protect the environmental integrity of
4 the state. The Director, or his delegatee within his staff, shall serve as
5 the issuing authority for the State;

6 (2) initiation and settlement of civil or administrative
7 enforcement actions to compel compliance with laws, orders and regulations
8 charged to the responsibility of the Department of Pollution Control and
9 Ecology. In this regard, the Director may propose the assessment of civil
10 penalties as provided by law, and take all actions necessary to collect such
11 penalties;

12 (3) issuance of orders in such circumstances which reasonably
13 require emergency measures be taken to protect the environment or the public
14 health and safety;

15 (4) day-to-day administration of all activities which the
16 Department of Pollution Control and Ecology is empowered by law to perform,
17 including, but not limited to, the employment and supervision of such
18 technical, legal, and administrative staff, within approved appropriations,
19 necessary to carry out the responsibilities vested with the Department;

20 (5) providing technical and legal expertise and assistance in the
21 field of environmental protection to other agencies and subdivisions of the
22 state as appropriate;

23 (6) day-to-day administration of environmental programs delegated
24 to the State of Arkansas by the responsible agencies of the federal
25 government; and

26 (7) any other power or duty specifically vested with the Director
27 or Department by the General Assembly.

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29 8-1-203. Powers and Responsibilities of the Commission on Pollution
30 Control and Ecology.

31 (a) The Commission shall meet regularly in publicly noticed open
32 meetings to discuss and rule upon matters of environmental concern.

33 (b) The Commission's powers and duties shall be as follows:

34 (1) promulgation of rules and regulations implementing the
35 substantive statutes charged to the Department for administration;

- 1 (2) promulgation of rules, regulations, and procedures not
2 otherwise governed by applicable law which the Commission deems necessary to
3 assure public participation in environmental decision-making processes;
- 4 (3) promulgation of rules and regulations governing
5 administrative procedures for challenging or contesting Department actions;
- 6 (4) in the case of permitting or grants decisions, providing the
7 right to appeal a permitting or grants decision rendered by the Director or
8 his delegatee;
- 9 (5) in the case of an administrative enforcement or emergency
10 action, providing the right to contest any such action initiated by the
11 Director;
- 12 (6) instruct the Director to prepare such reports or perform such
13 studies as will advance the cause of environmental protection in the state;
- 14 (7) make recommendations to the Director regarding overall policy
15 and administration of the Department, provided however that the Director shall
16 always remain within the plenary authority of the Governor; and
- 17 (8) upon a majority vote, initiate review of any Director's
18 decision.

19 (c) (1) In providing for adjudicatory review as contemplated by
20 subdivisions (b) (4) and (5) of this section, the Commission may appoint one
21 (1) or more administrative hearing officers. The administrative hearing
22 officers shall at all times serve as an agent of the Commission.

23 (2) In hearings upon appeals of permitting or grants decisions by
24 the Director or contested administrative enforcement or emergency actions
25 initiated by the Director, the administrative hearing officers shall
26 administer the hearing in accordance with procedures adopted by the
27 Commission, and after due deliberation, submit his recommended decision to the
28 Commission.

29 (3) Commission review of any appealed or contested matter shall
30 be upon the record compiled by the administrative hearing officer and his
31 recommended decision. Commission review shall be de novo, provided however
32 that no additional evidence need be received unless the Commission so decides
33 in accordance with established administrative procedures. The Commission may
34 afford the opportunity for oral arguments to all parties of the adjudicatory
35 hearing. By the majority vote of a quorum, the Commission may affirm, reverse

1 and dismiss, or reverse and remand to the Director. If the Commission votes
2 to affirm or reverse, such decision shall constitute final agency action for
3 purposes of appeal.

4 (4) Any party aggrieved by the Commission decision may appeal as
5 provided by applicable law."

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7 SECTION 2. All provisions of this act of general and permanent nature
8 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
9 Revision Commission shall incorporate the same in the Code.

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11 SECTION 3. If any provisions of this act or the application thereof to
12 any person or circumstance is held invalid, the invalidity shall not affect
13 other provisions or applications of the act which can be given effect without
14 the invalid provisions or application, and to this end the provisions of this
15 act are declared to be severable.

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17 SECTION 4. The provisions of this act shall be in addition and
18 supplemental to all other laws of Arkansas and rules, regulations or policies
19 adopted by the Arkansas Commission on Pollution Control and Ecology now in
20 effect and shall repeal only such laws or parts of laws as may be specifically
21 in conflict with this act.

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23 SECTION 5. All laws and parts of laws in conflict with this act are
24 hereby repealed.

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26 /s/Dowd et al

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28 APPROVED: 4-10-91