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2 93rd General Assembly
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4

As Engrossed: H3/29/21

A Bill

HOUSE BILL 1664

5 By: Representative Vaught
6 By: Senator B. Johnson
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ENVIRONMENTAL COMPLIANCE RESOURCE
10 ACT; TO CLARIFY THE AUTHORITY OF AN ENVIRONMENTAL
11 COMPLIANCE OFFICER AND THE ENVIRONMENTAL VIOLATIONS
12 CITED BY ENVIRONMENTAL OFFICERS; TO CLARIFY THE
13 JUDICIAL VENUE WHERE CITATIONS ARE REQUIRED TO BE
14 FILED; AND FOR OTHER PURPOSES.
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Subtitle

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18 TO AMEND THE ENVIRONMENTAL COMPLIANCE
19 RESOURCE ACT; AND TO CLARIFY THE
20 AUTHORITY OF AN ENVIRONMENTAL COMPLIANCE
21 OFFICER, ENVIRONMENTAL VIOLATIONS CITED,
22 AND THE JUDICIAL VENUE WHERE CITATIONS
23 ARE FILED.
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. Arkansas Code § 8-6-2002 is amended to read as follows:
29 8-6-2002. Purpose.

30 The purpose of this subchapter is to protect the public health, safety,
31 and welfare of the state by:

32 (1) Improving the operational efficiency of the Division of
33 Environmental Quality concerning the resources provided to local governments
34 and other state agencies, boards, and commissions;

35 (2) Creating the Environmental Compliance Resource Program ~~as a~~
36 ~~consolidated program~~ to be administered by the division to provide resources



1 to local governments and other state agencies, boards, and commissions;

2 (3) Ensuring that cities, municipalities, counties, regional
3 solid waste management districts, and state agencies, boards, and commissions
4 have sufficient resources;

5 (4) Authorizing the division to develop, implement, and
6 administer an Environmental Compliance Resource Program; and

7 (5) Modernizing, simplifying, and clarifying the law related to
8 illegal dumping of solid waste and other similar issues that affect the
9 public health, safety, and welfare.

10
11 SECTION 2. Arkansas Code § 8-6-2003 is amended to read as follows:
12 8-6-2003. Definitions.

13 (a) To the extent that there is no conflict with the definitions in
14 subsection (b) of this section, this subchapter incorporates and adopts the
15 definitions of terms defined in Title 8, Chapter 6.

16 (b) As used in this subchapter:

17 (1) "Alleged violator" means a person that has been issued an
18 environmental citation under this subchapter by an environmental officer;

19 (2) "Cost statement" means a verified written statement that
20 accounts for the cost of solid waste removal or other remediation, including
21 without limitation receipts, and establishes that:

22 (A) The solid waste was removed from the location or the
23 environmental violation at the location was otherwise remediated; and

24 (B) The solid waste was properly disposed of at one (1) or
25 more of the following facilities:

26 (i) A permitted solid waste disposal facility;

27 (ii) A permitted solid waste processing facility;

28 (iii) A recycling center;

29 (iv) A scrap yard that purchases iron, steel,
30 aluminum, or other metals; or

31 (v) Any other facility that ~~an environmental officer~~
32 the Division of Environmental Quality finds to be a proper disposal facility
33 for the solid waste;

34 (3) "Environmental officer" means an employee of a city, county,
35 municipality, regional solid waste management district created under § 8-6-
36 701 et seq., or state agency, board, or commission who has+

1 (A) ~~Completed~~ completed all requirements under this
2 subchapter, including without limitation completing required training and
3 passing the required examination, obtaining certification, being sworn in,
4 and maintaining certification through continuing education; ~~and~~

5 (B) ~~Authority to enter land to investigate and inspect as~~
6 ~~provided under § 8-1-107 to enforce environmental laws under the authority of~~
7 ~~the Division of Environmental Quality;~~

8 (4) "Environmental violation" means an act or omission that:

9 (A) Is prohibited under § 8-6-2005; or

10 (B) Causes or results in the violation of a state law,
11 rule, or order that is:

12 (i) Designed to protect the public health, safety,
13 or welfare; and

14 (ii) Applicable to this subchapter under § 8-6-2004;

15 (5) ~~"Illegal dumping of solid waste"~~ "Illegal disposal of solid
16 waste" or "illegal dumping of solid waste" means:

17 (A) The illegal ~~placing~~ abandoning, depositing, releasing,
18 dumping, spilling, leaking, or causing to be placed, deposited, or dumped by
19 a ~~person~~ placing of any solid waste into or on any land or water so that the
20 solid waste or any constituent of the solid waste may enter the environment

21 or be emitted into the air or discharged into any waters of the state; or

22 (B) Causing any solid waste to be abandoned, deposited,
23 released, dumped, spilled, leaked, or placed into or on any land or water so
24 that the solid waste or any constituent part of the solid waste may enter the
25 environment or be emitted into the air or discharged into any waters of the
26 state that is prohibited by this chapter;

27 (A) ~~In or upon a public or private highway, road, or street,~~
28 ~~including a portion of the right of way in or upon a public or private~~
29 ~~highway, road, or street;~~

30 (B) ~~In or upon private property into or upon which the public is~~
31 ~~admitted by easement or license of the private property;~~

32 (C) ~~In or upon a public park or other public property; or~~

33 (D) ~~Upon property for which a permit has not been issued by the~~
34 ~~division;~~

35 (6)(A) "Illegal dump site" means a place where solid waste is
36 disposed of in a manner that is prohibited by this chapter.

1 (B) "Illegal dump site" includes a place where one (1) or
2 more of the following exists:

- 3 (i) An attractive nuisance;
4 (ii) A fire, health, or safety hazard;
5 (iii) A potential source of surface or groundwater
6 contamination;
7 (iv) A waste tire site as defined in § 8-9-402; or
8 (v) Other contamination that is hazardous to the
9 public health or endangers the environment; and

10 (7) "Person" means an individual, municipality, other
11 governmental entity, or other entity that is recognized by law with rights
12 and duties.

13
14 SECTION 3. Arkansas Code § 8-6-2004 is amended to read as follows:
15 8-6-2004. Applicability.

16 This subchapter applies to ~~the enforcement of illegal dumping of solid~~
17 ~~waste in violation of this subchapter~~ violations of this chapter, violations
18 of Chapter 6 of Arkansas Pollution Control and Ecology Commission Rule 18,
19 and violations of the Used Tire Recycling and Accountability Act, § 8-9-401
20 et seq.

21
22 SECTION 4. Arkansas Code § 8-6-2005 is amended to read as follows:
23 8-6-2005. Prohibited conduct.

24 An act or omission that results in one (1) or more of the following in
25 this state is prohibited by this subchapter:

- 26 (1) The illegal dumping of solid waste ~~on public or private~~
27 ~~property~~ or illegal disposal of solid waste;
28 (2) The creation or participation in the creation or furtherance
29 of an illegal dump site;
30 (3) The illegal disposal of solid waste or illegal dumping of
31 solid waste that has resulted from a property owner's own household
32 activities on his or her own land if the disposal:
33 (A) Creates a public or private nuisance;
34 (B) Is a hazard to health; or
35 (C) Involves the open dumping of garbage; or
36 (4) Any other environmental violation applicable to this

1 subchapter under § 8-6-2004.

2
3 SECTION 5. Arkansas Code § 8-6-2009(b), concerning promulgation of an
4 environmental citation form, is amended to read as follows:

5 (b) Subsection (a) of this section does not prohibit a municipality,
6 city, county, or regional solid waste management district from promulgating
7 citation forms for use in enforcement of violations of their local ordinances
8 or bylaws ~~for violations other than environmental violations.~~

9
10 SECTION 6. Arkansas Code § 8-6-2011 is amended to read as follows:

11 8-6-2011. Environmental officer authority.

12 (a) An environmental officer under this subchapter may perform one (1)
13 or more of the following duties to ensure compliance with and enforcement of
14 this subchapter:

15 (1) ~~Enter~~ Upon a showing of probable cause regarding
16 environmental violations, and subject to the administrative warrant
17 requirements in subsection (c) of this section, enter upon any public or
18 private property within the state to inspect suspected illegal dump sites,
19 littering, or related complaints for the purpose of obtaining information or
20 conducting investigations or inspections;

21 (2) ~~Enter public or private property to collect~~ Collect evidence
22 of illegal dumping of solid waste and littering and present the evidence to
23 the prosecuting attorney or a court of competent jurisdiction where the
24 offense was committed; and

25 (3) Perform all other duties specified in this subchapter
26 necessary for the administration and enforcement of this subchapter.

27 (b) An environmental officer, acting solely under his or her authority
28 as granted in this subchapter, shall not have the power of arrest.

29 (c)(1) When an environmental officer obtains information that supports
30 probable cause to believe that a violation of a law within his or her
31 regulatory authority is being or has been violated, the environmental officer
32 may demand entry onto any property, public or private, to conduct
33 inspections.

34 (2) If consent to inspect is denied, the environmental officer
35 may obtain an administrative warrant from a judicial officer.

36 (3) The issuance and execution of an administrative warrant

1 under subdivision (c)(2) of this section shall be as follows:

2 (A) A judge or magistrate otherwise authorized to issue
3 search warrants within his or her jurisdiction may, upon proper oath or
4 affirmation showing probable cause, issue an administrative warrant for the
5 purpose of conducting inspections authorized by this subchapter;

6 (B)(i) A judge or magistrate shall issue an administrative
7 warrant only upon an affidavit of an environmental officer having knowledge
8 of the facts alleged, sworn to before the judge or magistrate and
9 establishing the grounds for issuing the administrative warrant.

10 (ii) If the judge or magistrate is satisfied that
11 grounds for the application for an administrative warrant exist or that there
12 is probable cause to believe the grounds exist, he or she shall issue an
13 administrative warrant identifying the site to be inspected, and the purpose
14 of the inspection.

15 (iii) The administrative warrant shall:

16 (a) State the grounds for its issuance and the
17 name of each person whose affidavit has been taken in support of the
18 inspection;

19 (b) Be directed to an environmental officer;

20 (c) Command the person to whom it is directed
21 to inspect the area, premises, building, or conveyance identified for the
22 purpose specified;

23 (d) Specifically identify any documents or
24 samples to be gathered during the inspection;

25 (e) Direct that it be served during normal
26 business hours unless emergency or extraordinary circumstances compel
27 otherwise; and

28 (f) Designate the judge or magistrate to whom
29 it shall be returned;

30 (C)(i) If appropriate, the administrative warrant may
31 authorize the review and copying of documents that may be relevant to the
32 purpose of the inspection.

33 (ii)(a) If documents must be seized for the purpose
34 of copying, the person serving the administrative warrant shall prepare an
35 inventory of documents taken.

36 (b) The inventory shall be made in the

1 presence of the person executing the administrative warrant and of the person
2 from whose possession or facility the documents were taken, if present, or in
3 the presence of at least one (1) credible person other than the person
4 executing the administrative warrant.

5 (c) A copy of the inventory shall be delivered
6 to the person from whom or from whose site the documents were taken.

7 (iii) The seized documents shall be copied as soon
8 as feasible under circumstances preserving their authenticity, then returned
9 to the person from whom the documents were taken;

10 (D)(i) The administrative warrant may authorize the taking
11 of samples of materials generated, stored, or treated at the site.

12 (ii) The person executing the administrative warrant
13 shall prepare an inventory of all samples taken.

14 (iii) In any inspection conducted pursuant to an
15 administrative warrant in which samples are taken, the environmental officer
16 shall make split samples available to the person whose site is being
17 inspected;

18 (E)(i) An administrative warrant issued pursuant to this
19 section is required to be executed and returned within ten (10) days of its
20 date unless, upon a showing of a need for additional time, the judge or
21 magistrate orders otherwise.

22 (ii) The return of the administrative warrant shall
23 be made promptly, accompanied by a written inventory of any documents or
24 samples taken;

25 (F) The judge or magistrate who has issued an
26 administrative warrant shall attach to the administrative warrant a copy of
27 the return and all papers returnable in connection with the administrative
28 warrant and file them with the clerk of the circuit court or district court
29 for the judicial district in which the inspection was made; and

30 (G) A copy of the administrative warrant and all
31 supporting affidavits shall be provided to the person served or left at the
32 entry of the site inspected.

33 (d) Notwithstanding subsection (c) of this section, an administrative
34 warrant is not required for any inspection under the following circumstances:

35 (1) If the owner, operator, or agent in charge of the site
36 consents;

1 (2) In situations presenting imminent danger to public health
2 and safety or the environment;

3 (3) In situations involving inspection of conveyances, if there
4 is reasonable cause to believe that the mobility of the conveyance makes it
5 impracticable to obtain an administrative warrant;

6 (4) In any other exception or emergency circumstance when time
7 or opportunity to apply for an administrative warrant is lacking;

8 (5) In situations involving conditions that may be observed in
9 an open field, from an area practically open to public access, or in plain
10 view; or

11 (6) In all other situations in which an administrative warrant
12 is not constitutionally required.

13
14 SECTION 7. Arkansas Code § 8-6-2012 is amended to read as follows:

15 8-6-2012. Issuing an environmental citation.

16 (a) An environmental officer shall use the uniform environmental
17 citation form ~~under~~ referenced in § 8-6-2009 to issue a citation for an
18 alleged environmental violation under this ~~subchapter~~ chapter.

19 (b) An environmental officer may issue a citation for an alleged
20 environmental violation ~~of this subchapter to an alleged violator~~ committed
21 within the territorial jurisdiction of the environmental officer's employer.

22
23 SECTION 8. Arkansas Code § 8-6-2013 is amended to read as follows:

24 8-6-2013. Filing an environmental citation.

25 A citation for an alleged environmental violation issued by an
26 environmental officer shall be filed in a ~~district~~ court of competent
27 jurisdiction in the county where the alleged environmental violation was
28 committed.

29
30 SECTION 9. Arkansas Code § 8-6-2014 is amended to read as follows:

31 8-6-2014. Serving an environmental citation.

32 A citation for an alleged environmental violation issued under this
33 ~~subchapter~~ chapter shall be served in person or by mailing a copy of the
34 citation by certified mail, ~~restricted delivery~~, to either the address
35 obtained from evidence collected from the environmental violation location or
36 to the last known address of the alleged violator.

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SECTION 10. Arkansas Code § 8-6-2015 is amended to read as follows:

8-6-2015. Hearing on an environmental citation – Penalties.

(a)(1)(A) Except as provided under subdivision (a)(2) of this section, the alleged violator shall appear before the ~~district~~ court named within the citation at the location and time designated in the citation.

(B) The initial hearing shall occur no later than thirty (30) days after the time period expires for remediation of the alleged environmental violation.

(2) If, as verified by the environmental officer, the alleged environmental violation is remediated by the alleged violator within the time period established under § 8-6-2016 using the procedure under this subchapter, the ~~district~~ court shall dismiss the matter from the docket without hearing.

(3) If the environmental officer extends the time period for remediation under § 8-6-2016(c), the ~~district~~ court shall reschedule the hearing for not more than thirty (30) days after the extension for remediation.

(b) A ~~district~~ court having of competent jurisdiction over a citation issued by an environmental officer may issue penalties under § 8-6-204 ~~and may grant an available remedy referenced in this subchapter unless the remedy is not available to the district court.~~

(c)(1) A judgment entered under this subchapter:

(A) May be enforced in the same manner as any other judgment; and

(B) Is a final decision for purposes of appellate review.

(2) A person against which the judgment is entered by a district court may appeal the decision to circuit court.

(d) A judgment entered under this subchapter does not preclude claims under § 8-6-206 by another person.

SECTION 11. Arkansas Code § 8-6-2016(c)(2), concerning an extension of the time period for remediation procedures of an environmental citation, is amended to read as follows:

(2) If the environmental officer extends the time period under subdivision (c)(1) of this section, the environmental officer shall notify

1 the ~~district~~ court with jurisdiction over the environmental citation hearing
2 under § 8-6-2015 and request rescheduling of the hearing.

3
4 SECTION 12. Arkansas Code § 8-6-2016(e) and (f), concerning
5 remediation procedures for environmental violations under the Environmental
6 Compliance Resource Act, are amended to read as follows:

7 (e)(1) If the alleged violator has removed the solid waste ~~or~~,
8 remediated the environmental violation, and presented a cost statement to the
9 environmental officer, the environmental officer shall file an affidavit with
10 the ~~district~~ court that establishes that the environmental violation has been
11 remediated and the environmental citation is withdrawn.

12 (2) The affidavit shall include the cost statement and the
13 results of an investigation that the environmental officer has completed at
14 the location of the environmental violation.

15 (f) After filing the affidavit under subsection (e) of this section,
16 the environmental officer shall notify the ~~district~~ court that the hearing
17 required under § 8-6-2015 is unnecessary and the environmental citation has
18 been withdrawn.

19
20 SECTION 13. Arkansas Code § 8-6-2017(a), concerning fines and costs
21 for violations of the Environmental Compliance Resource Act, is amended to
22 read as follows:

23 (a) If fines and costs are not paid for judgments for violations of
24 this ~~subchapter~~ chapter, the party that has not paid the fines and costs is
25 subject to an administrative or civil enforcement action under law or rule,
26 or both.

27
28 SECTION 14. Arkansas Code § 8-6-2019(a), concerning an exemption in
29 the Environmental Compliance Resource Act for agriculture, is amended to read
30 as follows:

31 (a) Except as provided under subsection (b) of this section, ~~the~~
32 ~~Arkansas Solid Waste Management Act, § 8-6-201 et seq., this subchapter, and~~
33 ~~§ 8-6-901 et seq. do~~ does not apply to:

34 (1) The disposal of solid waste if the disposal:
35 (A) Results from operations of farms, grain elevators,
36 cotton gins, and similar industries;

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(B) Is at a place where agricultural gleanings and crop residue that result from operations of farms, grain elevators, cotton gins, and similar industries are being land applied in accordance with current management practices of the industries or the agricultural community; and

(C) Has been authorized and consented to by the landowner; or

(2) A landowner who disposes of solid waste on the property where the solid waste results from agricultural or farming operations or household operations.

/s/Vaught

APPROVED: 4/19/21