

As Engrossed: 3/5/91 3/22/91

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representative Jordan**

A Bill

HOUSE BILL 1618

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE § 8-4-103 TO ALLOW
9 GOVERNMENTAL ENTITIES OPERATING PUBLICLY OWNED WASTEWATER
10 TREATMENT WORKS THE AUTHORITY TO COLLECT CIVIL OR CRIMINAL
11 PENALTIES UP TO THE AMOUNT OF ONE THOUSAND DOLLARS
12 (\$1,000) PER DAY FOR VIOLATIONS BY INDUSTRIAL USERS; AND
13 FOR OTHER PURPOSES."

14
15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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17 SECTION 1. Arkansas Code 8-4-103 is hereby amended by adding an
18 additional subsection at the end thereof to read as follows:

19 "8-4-103. Penalties.

20 (a) Any person who violates any provision of this chapter or commits
21 any unlawful act under this chapter or violates any rule, regulation, or order
22 of the Arkansas Pollution Control and Ecology Commission shall be guilty of a
23 misdemeanor. Upon conviction, that person shall be subject to imprisonment
24 for not more than one (1) year or a fine of not more than ten thousand dollars
25 (\$10,000), or both such fine and imprisonment. Each day or part of a day
26 during which the violation is continued or repeated shall constitute a
27 separate offense. Any person who violates any provision of this chapter or
28 commits any unlawful act under this chapter or violates any rule, regulation,
29 or order of the commission and leaves the state or removes himself from the
30 jurisdiction of this state shall be guilty of a felony. Upon conviction, that
31 person shall be subject to imprisonment for not more than five (5) years or a
32 fine of not more than ten thousand dollars (\$10,000), or both such fine and
33 imprisonment. Each day or part of a day during which the violation is
34 continued or repeated shall constitute a separate offense.

35 (b) The Department of Pollution Control and Ecology is authorized to

1 institute a civil action in any court of competent jurisdiction to restrain
2 any violation of, and to compel compliance with, provisions of this chapter
3 and any rules, regulations, orders, or permits issued pursuant thereto to
4 require the taking of such remedial measures as may be necessary or
5 appropriate to implement or effectuate the provisions and purposes of this
6 chapter or to recover any expenses reasonably incurred by the department in
7 removing, correcting, or terminating any adverse effects resulting therefrom.
8 These purposes may include the cost of investigation, inspection, or survey
9 establishing such violation or unlawful act. The department is also
10 authorized to recover payment to the Arkansas Game and Fish Commission of
11 reasonable compensation for any loss or destruction of wildlife, fish, or
12 aquatic life, to recover payment to the state for any other expenses or actual
13 damages resulting therefrom, and to recover civil penalties assessed pursuant
14 to subsection (c) of this section. All expenses of the department recovered
15 under this section shall be deposited in the operating fund of the department
16 for use in the administration of this chapter. The fact that any such
17 violation may constitute a misdemeanor shall not be a bar to the maintenance
18 of a civil action.

19 (c) Any person who violates any provision of this chapter or the
20 regulations issued pursuant to this chapter, or who violates any condition of
21 a permit issued under this chapter, may:

22 (1) In accordance with the regulations issued by the commission,
23 be assessed a civil penalty by the commission. The penalty shall not exceed
24 five thousand dollars (\$5,000) for each violation and each day of a continuing
25 violation may be deemed a separate violation for purposes of penalty
26 assessments. However, no civil penalty may be assessed until the person
27 charged with the violation has been given the opportunity for a hearing on the
28 violation pursuant to §§ 8-4-205, 8-4-212, and 8-4-218 - 8-4-221. Appeal of
29 the commission's decision may be taken in accordance with the appellate
30 procedures specified in §§ 8-4-222 - 8-4-229;

31 (2) In any civil action instituted by the department under this
32 chapter, be assessed a civil penalty by the court. The penalty shall not
33 exceed five thousand dollars (\$5,000) for each violation. Each day of a
34 continuing violation may be deemed a separate violation for purposes of
35 penalty assessments.

1 (d) Except as permitted by law, any person who shall willfully resist,
2 prevent, impede, or interfere with the Director of the Department of Pollution
3 Control and Ecology or any authorized employees or agents of the department in
4 the performance of duties pursuant to this chapter shall be guilty of a
5 misdemeanor and may, upon conviction, be punished by a criminal penalty of not
6 more than one thousand dollars (\$1,000) or by imprisonment of not more than
7 thirty (30) days, or by both.

8 (e) Any governmental entity permitted to operate a Publicly Owned
9 Treatment Works (POTW) shall have the authority, pursuant to duly promulgated
10 ordinances or regulations, to collect in a court of competent jurisdiction
11 civil or criminal penalties in an amount not to exceed one thousand dollars
12 (\$1,000) for each violation by industrial users of pretreatment standards or
13 requirements. *Such criminal or civil action may be initiated only after a*
14 *majority vote of the entity's governing body resolves to pursue such action.*
15 For the purpose of this subsection, each day of a continuing violation may be
16 deemed a separate violation."

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18 SECTION 2. *All rules and regulations promulgated pursuant to this act*
19 *shall be reviewed by the Joint Interim Committee on Public Health, Welfare and*
20 *Labor or an appropriate subcommittee thereof.*

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22 SECTION 3. All provisions of this act of a general and permanent nature
23 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
24 Revision Commission shall incorporate the same in the Code.

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26 SECTION 4. If any provisions of this act or the application thereof to
27 any person or circumstance is held invalid, the invalidity shall not affect
28 other provisions or applications of the act which can be given effect without
29 the invalid provisions or application, and to this end the provisions of this
30 act are declared to be severable.

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

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/s/ James Jordan

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