

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Senators Dowd, Ross**

# A Bill

**SENATE BILL 167**

## For An Act To Be Entitled

8 "AN ACT TO AMEND THE ARKANSAS CODE TO EMPOWER THE DIRECTOR  
9 OF THE DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY TO DENY  
10 PERMITS, LICENSES, CERTIFICATIONS OR OPERATIONAL  
11 AUTHORIZATIONS TO APPLICANTS WHO HAVE A RECORD OF  
12 ENVIRONMENTAL NONCOMPLIANCE; AND FOR OTHER PURPOSES."

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

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16 SECTION 1. Subchapter 1 of Chapter 1 of Title 8 of the Arkansas Code of  
17 1987 is hereby amended by adding the following section:

18 "8-1-106. Denial of Applications - Disclosure Statements.

19 (a) For the purposes of this section:

20 (1) 'affiliated person' includes, but is not limited to:

21 (A) any officer, director or partner of the applicant;

22 (B) any person employed by the applicant in a supervisory  
23 capacity over operations of *the facility which is the subject of the*  
24 *application* which may adversely impact the environment, or with discretionary  
25 authority over such operations;

26 (C) any person owning or controlling more than five percent  
27 (5%) of the applicant's debt or equity; and

28 (D) any person who is not now in compliance or has a  
29 history of non-compliance with the  
30 environmental laws or regulations of this  
31 state or any other jurisdiction and who  
32 through relationship by affinity or  
33 consanguinity or who through any other  
34 relationship could be reasonably expected  
35 to significantly influence the applicant

1 in a manner which could adversely affect  
2 the environment;

3 (2) 'disclosure statement' means a written statement by the  
4 applicant which contains:

5 (A) the full name, business address, and social security  
6 number of the applicant, and all affiliated persons;

7 (B) the full name and business address of any legal entity  
8 in which the applicant holds a debt or equity interest of at least five  
9 percent (5%) or which is a parent company or subsidiary of the applicant, and  
10 a description of the on-going organizational relationships as they may impact  
11 operations within the state;

12 (C) a description of the experience and credentials of the  
13 applicant, including any past or present permits, licenses, certifications, or  
14 operational authorizations relating to environmental regulation;

15 (D) a listing and explanation of any civil or criminal  
16 legal actions by government agencies involving environmental protection laws  
17 or regulations against the applicant and affiliated persons in the ten years  
18 immediately preceding the filing of the application, including administrative  
19 enforcement actions resulting in the imposition of sanctions, permit or  
20 license revocations or denials issued by any state or federal authority,  
21 actions that have resulted in a finding or a settlement of a violation, and  
22 actions that are pending;

23 (E) a listing of any federal environment agency and any  
24 other environmental agency outside this state that has or has had regulatory  
25 responsibility over the applicant; and

26 (F) any other information the Director may require that  
27 relates to the competency, reliability, or responsibility of the applicant and  
28 affiliate persons.

29 (3) *'history of noncompliance' means past operations by an applicant*  
30 *which clearly indicate a disregard for environmental regulation, or a*  
31 *demonstrated pattern of prohibited conduct which could reasonably be expected*  
32 *to result in adverse environmental impact if a permit were issued.*

33 (b) (1) *Except as provided in subsection (2) of this subsection (b), all*  
34 *applicants for the issuance, or transfer of any permit, license, certification*  
35 *or operational authority issued by the Department of Pollution Control and*  
36 *Ecology shall file a disclosure statement with their applications. Deliberate*

1 falsification or omission of relevant information from disclosure statements  
2 shall be grounds for civil or criminal enforcement action or administrative  
3 denial of a permit, license, certification or operational authorization.

4           (2) *If the applicant is a publicly-held company required to file*  
5 *periodic reports under the Securities and Exchange Act of 1934, or a wholly-*  
6 *owned subsidiary of a publicly-held company, the applicant shall not be*  
7 *required to submit a disclosure statement, but shall submit the most recent*  
8 *annual and quarterly reports required by the Securities and Exchange*  
9 *Commission, which provide information regarding legal proceedings in which the*  
10 *applicant has been involved. The applicant shall submit such other*  
11 *information as the Director may require that relates to the competency,*  
12 *reliability, or responsibility of the applicant and affiliated persons.*

13           (c) The Director may deny the issuance, or transfer of any permit,  
14 license, certification or operational authority if he finds, based upon the  
15 disclosure statement and other investigation which he deems appropriate, that  
16 (1) the applicant has a history of noncompliance with the environmental laws  
17 or regulations of this state or any other jurisdiction, (2) *an applicant which*  
18 *owns or operates other facilities in the state is not in substantial*  
19 *compliance with, or on a legally enforceable schedule that will result in*  
20 *compliance with, the environmental laws or regulations of this state, or (3) a*  
21 *person with a history of noncompliance with the environmental laws or*  
22 *regulations of this state or any other jurisdiction is affiliated with the*  
23 *applicant to the extent of being capable of significantly influencing the*  
24 *practices or operations of the applicant which could have impact upon the*  
25 *environment.*

26           (d) In reaching any decision pursuant to the requirements of this  
27 section, the Director shall consider:

28                   (1) the potential danger to the environment and public health and  
29 safety if the applicant's proposed activity is not conducted in a competent  
30 and responsible manner;

31                   (2) the degree to which past and present activities in this state  
32 and other jurisdictions directly bear upon the reliability, competence and  
33 responsibility of the applicant; and

34                   (3) any evidence of rehabilitation following past violations or  
35 convictions.

1 (e) Any person or legal entity aggrieved by a decision of the Director  
2 under this section may appeal to the Commission on Pollution Control and  
3 Ecology through administrative procedures adopted by the Commission.

4 (f) The Director shall adopt regulations necessary to implement this  
5 section."

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7 SECTION 2. The provisions of this act expressly supersede those set out  
8 in Act 531 of 1989. This act does not supersede or affect in any way the  
9 Arkansas Surface Coal and Mining Act and implementing regulations as it  
10 impacts on the import of past or pending violations upon surface coal mining  
11 operators.

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

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17 SECTION 4. If any provision of this act or the application thereof to  
18 any person or circumstance is held invalid, such invalidity shall not affect  
19 other provisions or applications of the act which can be given effect without  
20 the invalid provision or application, and to this end the provisions of this  
21 act are declared to be severable.

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

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26 SECTION 6. EMERGENCY. It is hereby found and determined by the General  
27 Assembly that the Director of the Department of Pollution Control and Ecology  
28 is in need of additional authority to deny applications for the issuance, or  
29 transfer of permits if he determines that an applicant, or person with  
30 substantial influence over the applicant, has a history of non-compliance with  
31 environmental laws or regulations; this act provides such authority and should  
32 be given immediate effect in order to grant additional environmental  
33 protection as soon as possible. Therefore, an emergency is hereby declared to  
34 exist, and this act being immediately necessary for the protection of the  
35 public peace, health, and safety shall be in full force and effect from and

As Amended 1/01/07 2/11/07 2/22/07

1 after its passage and approval.

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*/s/Dowd et al*

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