

1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

A Bill

HOUSE BILL 1062

4 **By: Representatives J. Miller, George, Maddox, McGinnis, Hinshaw, McJunkin, Purdom,**
5 **Watts, Whorton, Hunton, Steele, Curran, and O. Miller**

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For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF CHAPTERS 1, 2 AND 4
10 OF TITLE 8 OF THE ARKANSAS CODE OF 1987, RELATING TO WATER
11 AND AIR POLLUTION AND THE AUTHORITY AND RESPONSIBILITY OF
12 THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION WITH
13 RESPECT THERETO; AND FOR OTHER PURPOSES."

14

15

Subtitle

16 "TO AMEND VARIOUS LAWS RELATING TO WATER AND AIR
17 POLLUTION."

18

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

20

21 *SECTION 1. Arkansas Code 8-1-101 is amended to read as follows:*

22 *"8-1-101. Purpose.*

23 *(a) It is the purpose of this chapter to authorize the Arkansas*
24 *Pollution Control and Ecology Commission to establish a system of fees for the*
25 *issuance of permits required by §§ 8-4-101 - 8-4-106, 8-4-201 - 8-4-229,*
26 *8-4-301 - 8-4-313, and 8-6-201 - 8-6-217 and to authorize the Department of*
27 *Pollution Control and Ecology to collect and enforce these fees.*

28 *(b) The express purpose of these fees shall be to defray the*
29 *administrative costs of issuance, renewal, inspection, modification, and*
30 *monitoring associated with these permits."*

31

32 *SECTION 2. Arkansas Code 8-1-102(4) is amended to read as follows:*

33 *"(4) 'Initial fee' means that fee required by this chapter to be*
34 *submitted with all applications for water, air, and solid waste permits*
35 *required by §§ 8-4-101 - 8-4-106, 8-4-201 - 8-4-229, 8-4-301 - 8-4-313, or §§*

1 8-6-201 - 8-6-217;"

2

3 SECTION 3. Arkansas Code 8-1-103(1) is amended to read as follows:

4 "(1) Following a public hearing and based upon a record calculating the
5 reasonable administrative costs of evaluating and taking action on permit
6 applications and of implementing and enforcing the terms and conditions of
7 permits and variances, the commission shall establish, by regulation,
8 reasonable fees for initial issuance, annual review, and modification of
9 water, air, or solid waste permits required by §§ 8-4-101 - 8-4-106, 8-4-201 -
10 8-4-229, 8-4-301 - 8-4-313, and 8-6-201 - 8-6-217. These fees shall consist of
11 initial fees, annual review fees, and modification fees, as defined in §
12 8-1-102."

13

14 SECTION 4. Arkansas Code 8-1-106 is amended to read as follows:

15 "8-1-106. Definitions - Disclosure statements - Denial of application -
16 Appeal - Regulations.

17 (a) For the purposes of this section:

18 (1) 'Affiliated person' includes, but is not limited to:

19 (A) Any officer, director, or partner of the applicant;

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

24 (C) Any person owning or controlling more than five percent (5%) of the
25 applicant's debt or equity; and

26 (D) Any person who is not now in compliance or has a history of
27 noncompliance with the environmental laws or regulations of this state or any
28 other jurisdiction and who through relationship by affinity or consanguinity
29 or who through any other relationship could be reasonably expected to
30 significantly influence the applicant in a manner which could adversely affect
31 the environment;

32 (2) 'Disclosure statement' means a written statement by the applicant
33 which contains:

34 (A) The full name, business address, and social security number of the
35 applicant, and all affiliated persons;

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

6 (C) A description of the experience and credentials of the applicant,
7 including any past or present permits, licenses, certifications, or
8 operational authorizations relating to environmental regulation;

9 (D) A listing and explanation of any civil or criminal legal actions by
10 government agencies involving environmental protection laws or regulations
11 against the applicant and affiliated persons in the ten (10) years immediately
12 preceding the filing of the application, including administrative enforcement
13 actions resulting in the imposition of sanctions, permit or license
14 revocations or denials issued by any state or federal authority, actions that
15 have resulted in a finding or a settlement of a violation, and actions that
16 are pending;

17 (E) A listing of any federal environmental agency and any other
18 environmental agency outside this state that has or has had regulatory
19 responsibility over the applicant; and

20 (F) Any other information the director may require that relates to the
21 competency, reliability, or responsibility of the applicant and affiliate
22 persons;

23 (3) 'History of noncompliance' means past operations by an applicant
24 which clearly indicate a disregard for environmental regulation, or a
25 demonstrated pattern of prohibited conduct which could reasonably be expected
26 to result in adverse environmental impact if a permit were issued.

27 (b)(1) Except as provided in subdivision (2) of this subsection, all
28 applicants for the issuance or transfer of any permit, license, certification,
29 or operational authority issued by the Department of Pollution Control and
30 Ecology shall file a disclosure statement with their applications. Deliberate
31 falsification or omission of relevant information from disclosure statements
32 shall be grounds for civil or criminal enforcement action or administrative
33 denial of a permit, license, certification, or operational authorization.

34 (2) If the applicant is a publicly held company required to file
35 periodic reports under the Securities and Exchange Act of 1934, or a wholly

1 owned subsidiary of a publicly held company, the applicant shall not be
2 required to submit a disclosure statement, but shall submit the most recent
3 annual and quarterly reports required by the Securities and Exchange
4 Commission, which provide information regarding legal proceedings in which the
5 applicant has been involved. The applicant shall submit such other
6 information as the director may require that relates to the competency,
7 reliability, or responsibility of the applicant and affiliated persons.

8 (c) The director may deny the issuance or transfer of any permit,
9 license, certification, or operational authority if he finds, based upon the
10 disclosure statement and other investigation which he deems appropriate, that:

11 (1) The applicant has a history of noncompliance with the environmental
12 laws or regulations of this state or any other jurisdiction;

13 (2) An applicant which owns or operates other facilities in the state
14 is not in substantial compliance with, or on a legally enforceable schedule
15 that will result in compliance with, the environmental laws or regulations of
16 this state; or

17 (3) A person with a history of noncompliance with the environmental
18 laws or regulations of this state or any other jurisdiction is affiliated with
19 the applicant to the extent of being capable of significantly influencing the
20 practices or operations of the applicant which could have impact upon the
21 environment.

22 (d) In reaching any decision pursuant to the requirements of this
23 section, the director shall consider:

24 (1) The potential danger to the environment and public health and
25 safety if the applicant's proposed activity is not conducted in a competent
26 and responsible manner;

27 (2) The degree to which past and present activities in this state and
28 other jurisdictions directly bear upon the reliability, competence, and
29 responsibility of the applicant; and

30 (3) Any evidence of rehabilitation following past violations or
31 convictions.

32 (e) An applicant for a transfer of a permit shall notify the director
33 at least thirty (30) days in advance of the proposed transfer date of the
34 proposed transfer and submit a 'disclosure statement' as required in this
35 section. The permit is automatically transferred to the new permittee unless

1 the director denies the request to transfer within thirty (30) days of the
2 receipt of the disclosure statement. Only those reasons set out in subsection
3 (c) of this section and the deliberate falsification or omission of the
4 relevant information from the disclosure statement as set out in subsection
5 (b)(1) of this section shall constitute grounds for the denial of a transfer.

6 (f) Any person or legal entity aggrieved by a decision of the director
7 under this section may appeal to the Commission on Pollution Control and
8 Ecology through administrative procedures adopted by the commission.

9 (g) The commission shall adopt regulations necessary to implement this
10 section."

11

12 SECTION 5. Arkansas Code 8-1-201 is amended to read as follows:

13 "8-1-201. Legislative intent.

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

21 Further, in delineating the responsibility between the Department of
22 Pollution Control and Ecology and the Pollution Control and Ecology
23 Commission, it is the intent of the General Assembly neither to expand nor to
24 diminish any rights of property owners of this state under Article 2, §22 of
25 the Constitution of the State of Arkansas."

26

27 SECTION 6. Arkansas Code 8-1-202 is amended to read as follows:

28 "8-1-202. Powers of the Director of the Department of Pollution Control
29 and Ecology.

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

34 (b) The director shall be the executive officer and active
35 administrator of all pollution control activities in the state. As such, the

1 director's duties shall include:

2 (1) (A) The administration of permitting, licensing, certification, and
3 grants programs deemed necessary to protect the environmental integrity of the
4 state.

5 (B) The director, or his delegatee within his staff, shall serve as the
6 issuing authority for the state;

7 (2) (A) Initiation and settlement of civil or administrative enforcement
8 actions to compel compliance with laws, orders, and regulations charged to the
9 responsibility of the Department of Pollution Control and Ecology.

10 (B) In this regard, the director may propose the assessment of civil
11 penalties as provided by law, and take all actions necessary to collect such
12 penalties;

13 (3) Issuance of orders in such circumstances which reasonably require
14 emergency measures be taken to protect the environment or the public health
15 and safety except to the extent that the matter involved is reserved to the
16 jurisdiction or orders of the Commission for rulemaking procedures in 8-4-202;

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

22 (5) Providing technical and legal expertise and assistance in the field
23 of environmental protection to other agencies and subdivisions of the state as
24 appropriate;

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

28 (7) Any other power or duty specifically vested with the director or
29 department by the General Assembly."

30

31 SECTION 7. Arkansas Code 8-1-203 is amended to read as follows:

32 "8-1-203. Powers and responsibilities of the Pollution Control and
33 Ecology Commission.

34 (a) The commission shall meet regularly in publicly noticed open
35 meetings to discuss and rule upon matters of environmental concern.

1 (b) The commission's powers and duties shall be as follows:

2 (1) Promulgation of rules and regulations implementing the substantive
3 statutes charged to the department for administration;

4 (2) Promulgation of rules, regulations and procedures not otherwise
5 governed by applicable law which the commission deems necessary to secure
6 public participation in environmental decision making processes.

7 (3) Promulgation of rules and regulations governing administrative
8 procedures for challenging or contesting department actions;

9 (4) In the case of permitting or grants decisions, providing the right
10 to appeal a permitting or grants decision rendered by the director or his
11 delegatee;

12 (5) In the case of an administrative enforcement or emergency action,
13 providing the right to contest any such action initiated by the director;

14 (6) Instruct the director to prepare such reports or perform such
15 studies as will advance the cause of environmental protection in the state;

16 (7) Make recommendations to the director regarding overall policy and
17 administration of the department, provided, however, that the director shall
18 always remain within the plenary authority of the Governor; and

19 (8) Upon a majority vote, initiate review of any director's decision.

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

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

30 (3) (A) (i) Commission review of any appealed or contested matter shall
31 be upon the record compiled by the administrative hearing officer and his
32 recommended decision.

33 (ii) Commission review shall be de novo, provided, however, that
34 no additional evidence need be received unless the commission so decides in
35 accordance with established administrative procedures.

1 (B) The commission may afford the opportunity for oral arguments to
2 all parties of the adjudicatory hearing.

3 (C) (i) By the majority vote of a quorum, the commission may affirm,
4 reverse and dismiss, or reverse and remand to the director.

5 (ii) If the commission votes to affirm or reverse, such decision
6 shall constitute final agency action for purposes of appeal.

7 (4) Any party aggrieved by the commission decision may appeal as
8 provided by applicable law."

9

10 SECTION 8. Arkansas Code 8-2-205 is amended to read as follows:

11 "8-2-205. Procedure for issuance of rules or regulations, appeals,
12 hearings, etc.

13 (a) The procedure of the Arkansas Pollution Control and Ecology
14 Commission for issuance of any rules and regulations, conduct of hearings,
15 notice, review of actions on certificates, right of appeal, presumptions,
16 finality of actions, and related matters shall be as provided in Part I of the
17 Arkansas Water and Air Pollution Control Act as amended, §§ 8-4-101 - 8-4-106,
18 8-4-201 - 8-4-229, including without limitation §§ 8-4-202, 8-4-210, 8-4-212 -
19 8-4-214, 8-4-218 - 8-4-229.

20 (b) Any permittee or person subject to regulation may petition the
21 commission for a declaratory order as to the applicability of any rule,
22 statute, permit or order enforced by the department or the commission. Such
23 petitions shall be processed in the same manner as appeals under the
24 procedures prescribed by §§8-4-205, 8-4-212, and 8-4-218 - 8-4-229. These
25 declaratory orders shall have the same status as an order of the commission."

26

27 SECTION 9. Arkansas Code 8-4-102(3) and (4) are amended to read as
28 follow:

29 "(3) 'Other wastes' means garbage, municipal refuse, decayed wood,
30 sawdust, shavings, bark, lime, sand, ashes, offal, oil, tar chemicals, and all
31 other organic or inorganic substances, not including sewage or industrial
32 waste which may be discharged into the waters of the state. 'Any wastes' and
33 'pollutants' includes sewage, industrial wastes, or other wastes;

34 (4) 'Pollution' means such contamination or other alteration of the
35 physical, chemical, or biological properties of any waters of the state, or

1 such discharge of any liquid, gaseous, or solid substance in any waters of the
2 state as will, or is likely to, render the waters harmful, detrimental, or
3 injurious to public health, safety, or welfare; to domestic, commercial,
4 industrial, agricultural, recreational, or other legitimate beneficial uses;
5 or to livestock, wild animals, birds, fish, or other aquatic life;"

6

7 SECTION 10. Arkansas Code 8-4-103 is amended to read as follows:

8 "8-4-103. Criminal, civil, and administrative penalties.

9 (a) CRIMINAL PENALTIES.

10 (1) (A) Any person who violates any provision of this subchapter, who
11 commits any unlawful act under it, or who violates any rule, regulation, or
12 order of the commission or department, shall be guilty of a misdemeanor.

13 (B) Notwithstanding any other provisions of Arkansas law, upon
14 conviction that person shall be subject to imprisonment for not more than one
15 (1) year or a fine of not more than twenty-five thousand dollars (\$25,000), or
16 subject to both such fine and imprisonment. For the purpose of fines only,
17 each day or part of a day during which the violation is continued or repeated
18 shall constitute a separate offense.

19 (2) (A) It shall be unlawful for a person to:

20 (i) Violate any provision of this subchapter, commit any unlawful
21 act under it, or violate any rule, regulation, or order of the commission or
22 department, and leave the state or remove his person from the jurisdiction of
23 this state;

24 (ii) Purposely, knowingly, or recklessly cause pollution of the
25 waters or air of the state in a manner not otherwise permitted by law, and
26 thereby create a substantial likelihood of adversely affecting human health,
27 animal or plant life, or property; or

28 (iii) Purposely or knowingly make any false statement,
29 representation, or certification in any document required to be maintained
30 under this chapter, or falsify, tamper with, or render inaccurate any
31 monitoring device, method or record required to be maintained under this
32 chapter.

33 (B) (i) A person who violates this subdivision (2) shall be guilty of
34 a felony.

35 (ii) Notwithstanding any other provisions of Arkansas law, upon

1 conviction that person shall be subject to imprisonment for not more than five
2 (5) years or a fine of not more than fifty thousand dollars (\$50,000), or
3 subject to both such fine and imprisonment. For the purpose of fines only,
4 each day or part of a day during which the violation is continued or repeated
5 shall constitute a separate offense.

6 (3) (A) Any person who purposely, knowingly, or recklessly causes
7 pollution of the waters or air of the state in a manner not otherwise
8 permitted by law, and thereby places another person in imminent danger of
9 death or serious bodily injury, shall be guilty of a felony.

10 (B) Notwithstanding any other provisions of Arkansas law, upon
11 conviction that person shall be subject to imprisonment for not more than
12 twenty (20) years or a fine of not more than two hundred fifty thousand
13 dollars (\$250,000), or subject to both such fine and imprisonment. For the
14 purpose of fines only, each day or part of a day during which the violation is
15 continued or repeated shall constitute a separate offense.

16 (4) Notwithstanding the limits on fines set in subdivisions (1)-(3)
17 above, if a person convicted under any of the above subdivisions has derived
18 or will derive pecuniary gains from commission of the offenses, then he may be
19 sentenced to pay a fine not to exceed twice the amount of the pecuniary gain.

20 (b) CIVIL PENALTIES. The department is authorized to institute a civil
21 action in any court of competent jurisdiction to accomplish any or all of the
22 following:

23 (1) Restrain any violation of, or compel compliance with, the
24 provisions of this subchapter and of any rules, regulations, orders, permits,
25 or plans issued pursuant thereto;

26 (2) Affirmatively order that remedial measures be taken as may be
27 necessary or appropriate to implement or effectuate the purposes and intent of
28 this subchapter;

29 (3) Recover all costs, expenses, and damages to the department
30 and any other agency or subdivision of the state in enforcing or effectuating
31 the provisions of this subchapter, including but not limited to natural
32 resource damages;

33 (4) Assess civil penalties in an amount not to exceed ten
34 thousand dollars (\$10,000) per day for violations of this subchapter and of
35 any rules, regulations, permits, or plans issued pursuant thereto; or

1 (5) Recover civil penalties assessed pursuant to subsection (c)
2 of this section.

3 (c) Any person who violates any provision of this subchapter and
4 regulations, rules, permits, or plans issued pursuant thereto may be assessed
5 an administrative civil penalty not to exceed ten thousand dollars (\$10,000)
6 per violation. Each day of a continuing violation may be deemed a separate
7 violation for purposes of penalty assessment. No civil penalty may be assessed
8 until the person charged with the violation has been given the opportunity for
9 a hearing in accordance with regulations adopted by the commission. All
10 hearings and appeals arising under this subchapter shall be conducted in
11 accordance with the procedures prescribed by §§ 8-4-205, 8-4-212, and 8-4-218
12 - 8-4-229. These administrative procedures may also be used to recover all
13 costs, expenses, and damages to the department and any other agency or
14 subdivision of the state in enforcing or effectuating the provisions of this
15 subchapter, including but not limited to natural resource damages.

16 (d) (1) Before assessing a civil penalty under subsection (c) above, the
17 director shall provide public notice of and a reasonable opportunity to
18 comment on the proposed issuance of such order. If the civil penalty is being
19 assessed under an order on consent, the order shall not be effective until
20 thirty (30) days after the publication of notice of such order. Notice shall
21 also be given to each member of the commission.

22 (2) Notice of any administrative enforcement order shall contain the
23 following:

24 (A) the identity of the person or facility alleged to be in
25 violation;

26 (B) the location by city or county of the alleged violation;

27 (C) a brief description by environmental media (i.e. water, air,
28 solid waste, hazardous waste) impacted by the alleged violation;

29 (D) the type of administrative action proposed (i.e. consent
30 order, notice of violation, emergency order);

31 (E) the amount of penalty to be assessed.

32 (3) Any person who comments on a proposed assessment of a penalty under
33 this subsection shall be given notice of any hearing held under this
34 subsection. In any hearing held under this subsection, such person shall have
35 a right to intervene upon timely application.

1 (4) If no hearing is held on the proposed order, any person who
2 commented on the proposed order may petition, within thirty (30) days of the
3 effective date of the order, the commission to set aside such order and to
4 provide a hearing. If the evidence presented by the petitioner is material
5 and was not considered in the issuance of the order, and the commission finds
6 in light of the new evidence that the order is not reasonable and appropriate,
7 it may set aside such order and provide a hearing. If the commission denies a
8 hearing under this subdivision, it shall provide to the petitioner notice of
9 and its reasons for such denial. The denial of such a hearing may be appealed
10 pursuant to §8-4-222.

11 (5) The commission, on its own initiative, may institute review of any
12 enforcement action taken by the director within thirty (30) days of the
13 effective date of such order.

14 (e) As an alternative to the limits on civil penalties set in
15 subsections (b) and (c) above, if a person found liable in actions brought
16 under any of the above subsections has derived pecuniary gain from commission
17 of the offenses, then he may be ordered to pay a civil penalty equal to the
18 amount of the pecuniary gain.

19 (f)(1) All moneys collected as reimbursement for expenses, costs, and
20 damages to the department shall be deposited in the operating fund of the
21 department.

22 (2) All moneys collected as civil penalties shall be deposited in
23 the Emergency Response Fund as provided by § 8-7-410. The director, in his
24 discretion, may accept in-kind services in partial mitigation of cash
25 penalties for projects or programs designed to advance environmental
26 interests, provided, however, that such services shall not duplicate or
27 augment services already provided by the department through appropriations of
28 the General Assembly.

29 (3) All moneys collected which represent the costs, expenses, or
30 damages of another agency or subdivision of the state shall be distributed to
31 the appropriate governmental entity.

32 (g)(1) Any governmental entity permitted to operate a Publicly Owned
33 Treatment Works (POTW) shall have the authority, pursuant to duly promulgated
34 ordinances or regulations, to collect in a court of competent jurisdiction
35 civil or criminal penalties in an amount not to exceed one thousand dollars

1 (\$1,000) for each violation by industrial users of pretreatment standards or
2 requirements.

3 (2) Such criminal or civil action may be initiated only after a
4 majority vote of the entity's governing body resolves to pursue such action.

5 (3) For the purpose of this subsection, each day of a continuing
6 violation may be deemed a separate violation.

7 (h) The culpable mental states referenced throughout this section shall
8 have the definitions set out in § 5-2-202.

9 (i) Solicitation or conspiracy, as defined by subchapters 3 and 4 of
10 chapter 3 of the Arkansas Criminal Code, to commit any criminal act proscribed
11 by this section and §§ 8-6-204 and 8-7-204 shall be punishable as follows:

12 (1) Any solicitation or conspiracy to commit an offense under this
13 section which is a misdemeanor shall be a misdemeanor subject to fines not to
14 exceed fifteen thousand dollars (\$15,000) per day of violation or imprisonment
15 for more than six (6) months, or both such fine and imprisonment.

16 (2) Any solicitation or conspiracy to commit an offense under this
17 section which is a felony subject to fines of fifty thousand dollars (\$50,000)
18 per day or imprisonment up to five (5) years shall be a felony subject to
19 fines up to thirty-five thousand dollars (\$35,000) per day or imprisonment up
20 to two (2) years, or both such fine and imprisonment.

21 (3) Any solicitation or conspiracy to commit an offense under
22 this section which is a felony subject to fines of one hundred thousand
23 dollars (\$100,000) per day or imprisonment up to ten (10) years shall be a
24 felony subject to fines up to seventy-five thousand dollars (\$75,000) per day
25 or imprisonment up to seven (7) years, or both such fine and imprisonment.

26 (4) Any solicitation or conspiracy to commit an offense under
27 this section which is a felony subject to fines of two hundred fifty thousand
28 dollars (\$250,000) per day or imprisonment up to twenty (20) years shall be a
29 felony subject to fines up to one hundred fifty thousand dollars (\$150,000)
30 per day or imprisonment up to fifteen (15) years, or both such fine and
31 imprisonment.

32 (j) In cases considering suspension of sentence or probation, efforts
33 or commitments by the defendant to remediate any adverse environmental effects
34 caused by his activities may be considered by the court to be restitution as
35 contemplated by § 5-4-301.

1 (k) A business organization, its agents or officers, may be found
2 liable under this section in accordance with the standards set forth in §
3 5-2-501 et seq., and sentenced to pay fines in accordance with the provisions
4 of § 5-4-201(d) and (e)."

5

6 SECTION 11. Arkansas Code 8-4-201 is amended to read as follows:

7 "8-4-201. Powers and duties of commission generally.

8 The Arkansas Pollution Control and Ecology Commission is given and
9 charged with the following powers and duties:

10 (1) Enforcement of Laws. To administer and enforce all laws and
11 regulations relating to the pollution of any waters of the state;

12 (2) Investigations and Surveys.

13 (A) To investigate the extent, character, and effect of the pollution
14 of the waters of this state;

15 (B) To conduct investigations, research, surveys, and studies and
16 gather data and information necessary or desirable in the administration or
17 enforcement of pollution laws; and

18 (C) To make such classification of the waters of this state as it may
19 deem advisable;

20 (3) Standards. To establish and alter such reasonable pollution
21 standards for any waters of this state in relation to the use to which they
22 are or may be put as it shall deem necessary for the purpose of this chapter;

23 (4) Program. To prepare a comprehensive program for the elimination or
24 reduction of the pollution of the waters of this state;

25 (5) Plans of Disposal Systems. To require to be submitted and to
26 approve plans and specifications for disposal systems, or any part of them,
27 and to inspect the construction thereof for compliance with the approved plans
28 thereof;

29 (6) Rules and Regulations. Consistent with A.C.A. 8-4-202 to adopt,
30 modify or repeal rules and regulations and to declare moratoriums or
31 suspension of the processing of a type or category of permits."

32

33 SECTION 12. Arkansas Code 8-4-202 is amended to read as follows:

34 "8-4-202. Rules and regulations.

35 (a) The Arkansas Pollution Control and Ecology Commission is given and

1 charged with the power and duty to adopt, modify, or repeal, after notice and
2 public hearings, rules and regulations implementing or effectuating the powers
3 and duties of the department and the commission under this chapter.

4 (b) Without limiting the generality of this authority, these rules and
5 regulations may, among other things, prescribe:

6 (1) Effluent standards specifying the maximum amounts or concentrations
7 and the physical, thermal, chemical, biological, and radioactive nature of the
8 contaminants that may be discharged into the waters of this state or into
9 publicly owned treatment facilities;

10 (2) Requirements and standards for equipment and procedures for
11 monitoring contaminant discharges at their sources including publicly owned
12 treatment facilities and industrial discharges into such facilities, the
13 collection of samples, and the collection, reporting, and retention of data
14 resulting from such monitoring; and

15 (3) Water quality standards, performance standards, and pretreatment
16 standards.

17 (c) Any person shall have the right to petition the Arkansas Pollution
18 Control and Ecology Commission for the issuance, amendment, or repeal of any
19 rule or regulation. Within sixty (60) days from the date of the submission of
20 a petition, the commission shall either institute rulemaking proceedings or
21 give the petitioner written notice denying the petition together with a
22 written statement setting out the reasons for denial.

23 (1) In the event the petition is denied the decision of the commission
24 will be deemed a final order subject to appeal as provided in subdivision
25 (d)(5) of this section.

26 (2) The record for appeal, in a petition denial, shall consist of the
27 petition for rulemaking filed with the commission, the commission's written
28 statement setting out the reasons for denial, and any document referenced
29 therein.

30 (d) (1) Prior to the adoption, amendment, or repeal of any rule or
31 regulation or prior to suspending the processing of a type or category of
32 permits or the declaration of a moratorium on a type or category of permits
33 the commission shall give at least twenty (20) days notice of its intended
34 action. The notice shall include a statement of the substance of the intended
35 action, a description of the subjects and issues involved, and the time,

1 place, and manner in which interested persons may make comments. The notice
2 shall be mailed to all persons who have requested advance notice of rulemaking
3 proceedings. The notice shall also be published at least twice in newspapers
4 having a general statewide circulation and in the appropriate industry, trade,
5 or professional publications the commission may select.

6 (2) All interested parties shall be afforded a reasonable opportunity
7 to submit written data, information, views, opinions, and arguments and to
8 make oral statements concerning the proposed rule, regulation, suspension, or
9 moratorium prior to a decision being rendered by the commission. All written
10 material, photographs, published material, electronic media received by the
11 commission shall be preserved and, along with a record of all oral comments
12 made at any public hearing, shall become an element of the record of
13 rulemaking. Any person who considers himself injured in his person, business
14 or property by final agency action under this section shall be entitled to
15 judicial review of the action under this section.

16 (3) If, in response to comments, the commission amends a proposed
17 regulation to the extent that the rule would have an effect not previously
18 expressed in the notice required by subsection (d)(1), the commission shall
19 provide another adequate public notice. This subsection shall not, however,
20 require a second public notice if the final regulation is a logical outgrowth
21 of the regulation proposed in the prior notice.

22 (4) The commission shall compile and maintain a record of rulemaking
23 that shall contain:

24 (A) A copy of all notices described in subdivision (d) of this section,
25 and a concise general statement of the basis and purpose of the proposed rule,
26 which shall include a written explanation of the necessity of the regulation
27 and a demonstration that any technical regulation or technical standard is
28 based on generally accepted scientific knowledge and engineering practices.
29 For any standard or regulation that is identical to a regulation promulgated
30 by the United States Environmental Protection Agency, this portion of the
31 record may be satisfied by reference to the Code of Federal Regulations. In
32 all other cases the department must provide its own justification with
33 appropriate references to the scientific and engineering literature or written
34 studies conducted by the department.

35 (B) Copies of all written material, photographs, published materials,

1 electronic media, and the record of all oral comments received by the
2 commission during the public comment period and hearings.

3 (C) A responsive summary which groups public comments into similar
4 categories and explains why the commission accepted or rejected the rationale
5 of each category.

6 (5) The decisions of the commission with regard to this section are
7 final and may be judicially appealed to the appropriate circuit court as
8 provided in 8-4-222 within thirty (30) days after filing with the Office of
9 Secretary of State by persons who have standing as set out in subdivision
10 (d)(2) of this section. The record for review shall consist of a copy of the
11 regulation and the record of rulemaking described in subdivision (d)(4) of
12 this section. Rule changes, suspensions, or moratoriums on types of
13 categories of permits adopted by the commission shall be stayed and not take
14 effect during the pendency of the appeal, except as specified in subsection
15 (e).

16 (e) If the commission determines that imminent peril to the public
17 health, safety, or welfare requires immediate change in the rules, or
18 immediate suspension, or moratorium on categories or types of permits, it may,
19 after documenting the facts and reasons, declare an emergency and implement
20 emergency rules, regulations, suspensions, or moratoriums. No rule,
21 regulation, suspension, or moratorium adopted under an emergency declaration
22 shall be effective for longer than ninety (90) days. The imminent loss of
23 federal funding, certification or authorization for any program administered
24 by the department shall establish a prima facie case of imminent peril to the
25 public health, safety or welfare."

26

27 SECTION 13. Arkansas Code 8-4-203 is amended to read as follows:

28 "8-4-203. Permits generally.

29 (a) The Arkansas Pollution Control and Ecology Commission is given and
30 charged with the power and duty to issue, continue in effect, revoke, modify,
31 or deny permits, under such conditions as it may prescribe, to prevent,
32 control, or abate pollution, for the discharge of sewage, industrial waste, or
33 other wastes into the waters of the state, including the disposal of
34 pollutants into wells, and for the installation, modification, or operation of
35 disposal systems or any part of them.

1 (b) (1) When any application is filed with the department for the
2 issuance of a new permit, the department shall cause notice of the application
3 to be published in a newspaper of general circulation in the county in which
4 the proposed facility is to be located.

5 (2) The notice required by this subsection shall advise that any
6 interested party may request a public hearing on the proposed permit by giving
7 the department a written request within ten (10) days of the publication of
8 the notice.

9 (3) Should a hearing be deemed necessary by the department, or in the
10 event the department desires such a hearing, the department shall schedule a
11 public hearing and shall by certified mail, return receipt requested, notify
12 the applicant and all persons who have submitted comments of the date, time,
13 and place thereof.

14 (4) The provisions of this subsection shall not be required for permit
15 transfers or minor modifications of existing permits.

16 (c) Whenever the department proposes to grant or deny any permit
17 application, it shall cause notice of its proposed action to be published in a
18 newspaper of general circulation in the county in which the facility that is
19 the subject of the application is located. The notice shall afford any
20 interested party thirty (30) calendar days in which to submit comments on the
21 proposed permit action. Not less than fifteen (15) days after the conclusion
22 of the public comment period, the department shall announce in writing its
23 final decision regarding the permit application. The department's final
24 decision shall include a response to each issue raised in any public comments
25 received during the public comment period. In the case of any discharge
26 limit, emission limit, environmental standard, analytical method or monitoring
27 requirements the record of the proposed action and the response shall include
28 a written explanation of the rationale for the proposal, demonstrating that
29 any technical requirements or standards are based upon generally accepted
30 scientific knowledge and engineering practices. For any standard or
31 requirement that is identical to a duly promulgated and applicable regulation,
32 this demonstration may be satisfied by reference to the regulation. In all
33 other cases the department must provide its own justification with appropriate
34 reference to the scientific and engineering literature or written studies
35 conducted by the department.

1 (d) All costs of publications of notice under this section shall be
2 paid by the applicant for the permit.

3 (e) Only those persons who submit comments on the record during the
4 public comment period and the applicant shall have standing to appeal the
5 decision of the department to the commission."
6

7 SECTION 14. Arkansas Code 8-4-204 is amended to read as follows:

8 "8-4-204 Permits - Revocation

9 The Arkansas Pollution Control and Ecology Commission is given and
10 charged with the power and duty to revoke, modify, or suspend, in whole or in
11 part, for cause any permit issued under this chapter, including without
12 limitation:

13 (1) Violation of any condition of the permit;

14 (2) Obtaining a permit by misrepresentation or failure to disclose
15 fully all relevant facts; or

16 (3) Change in any applicable regulation or change in any preexisting
17 condition affecting the nature of the discharge that requires either a
18 temporary or permanent reduction or elimination of the permitted discharge."
19

20 SECTION 15. Arkansas Code 8-4-205 is amended to read as follows:

21 "8-4-205 Permits - Hearings upon denial, revocation, or modification
22 and other permit actions.

23 (a) Any person who is denied a permit by the Director of the Department
24 of Pollution Control and Ecology or who has a permit revoked or modified or a
25 request for permit transfer or modification denied shall be afforded an
26 opportunity for a hearing by the commission in connection therewith, upon
27 written application made within thirty (30) days after service of notice of
28 the denial, revocation, or modification.

29 (b) (1) Only those interested person, other than the applicant, who have
30 submitted comments on the record regarding a proposed permit action during the
31 public comment period shall have standing to request a hearing by the
32 commission in connection therewith, upon written application made within
33 thirty (30) days after the date of the department_s final decision regarding
34 the permit action.

35 (2) No interested party requesting a hearing under this subsection may

1 raise any issue in the hearing that was not raised in the public comments
2 unless the party raising the issue shows good cause why such issue could not,
3 with reasonable diligence, have been discovered and presented during the
4 public comment period. The limitation in this subsection shall not restrict
5 the issues that may be addressed by the applicant in any appeal.

6 (3) A request for a hearing shall identify the permit action in
7 question and its date and must include a complete and detailed statement
8 identifying the legal and factual objections to the permit action.

9 (c)(1) Within thirty (30) days of the date the request for a hearing is
10 filed with the commission secretary, a preliminary hearing will be conducted
11 in the name of the commission by the commission_s authorized hearing officer.
12 At this preliminary hearing the hearing officer shall develop a recommended
13 decision for the commission regarding the extent to which, if at all, the
14 request should be granted or denied and which parties should be allowed to
15 participate. In reaching this decision, the hearing officer shall determine
16 whether the parties qualify as proper parties under subdivision (b)(1) and
17 whether the request conforms with the requirements under subdivision (b)(2)
18 and (3).

19 (2) The recommended decision of the hearing officer shall be
20 transmitted to the commission for action at its next regularly scheduled
21 meeting. The commission shall consider the recommended decision of the
22 hearing officer and shall either affirm the decision in whole or in part or
23 reverse the decision in whole or in part.

24 (3) At this preliminary hearing, the hearing officer shall weigh the
25 equities of any request for expedited review and advance the case on the
26 administrative docket as circumstances permit.

27 (4) The commission shall review the director's decision de novo.

28 (5) The hearing officer shall schedule the hearing and other
29 proceedings such that the appeal will be submitted to the commission for final
30 commission action within one hundred twenty (120) days after the preliminary
31 hearing unless the parties mutually agree to a longer period of time or the
32 hearing officer establishes a longer period of time for just cause.

33 (6) During the pendency of the appeal to the commission:

34 (A) The denial of a permit shall stand,

35 (B) The issuance, modification, or revocation of a permit or that

1 part of a permit which is the subject of the appeal shall be stayed.

2 (C) Notwithstanding (A) and (B), upon application by any party,
3 the commission may provide for a stay, modify the terms of a stay, or
4 terminate a stay under appropriate circumstances to avoid substantial
5 prejudice to any party.

6 (7) The decision of the commission is final, and only those persons who
7 are parties to the administrative appeal under this section shall have
8 standing to appeal a permitting decision to circuit court as provided for in
9 §§8-4-222 - 8-4-229."

10

11 SECTION 16. Arkansas Code 8-4-207(6) is amended to read as follows:

12 "(6) (A) Any records, reports, or information obtained under this
13 chapter and any permits, permit applications, and related documentation shall
14 be available to the public for inspection and copying.

15 (B) (i) However, information submitted to the department may be claimed
16 as confidential if its disclosure would divulge trade secrets.

17 (ii) The department shall deny any claim for confidentiality for the
18 name and address of any permit applicant or permittee or for any NPDES permit
19 applications, NPDES permits, and effluent data.

20 (iii) Information required by NPDES application forms, including any
21 information submitted on the forms themselves and any attachments used to
22 supply information required by the forms, shall not be claimed confidential
23 nor afforded this protection.

24 (iv) Any person adversely affected by a determination by the department
25 on a claim of confidentiality may appeal the determination as provided in
26 A.C.A. § 8-4-222 and 8-4-223."

27

28 SECTION 17. Arkansas Code 8-4-208(c) is amended to read as follows:

29 "(c) Any public hearing which may be held by the Director of the
30 Department of Pollution Control and Ecology preliminary to acting on a permit
31 application as required by the Federal Water Pollution Control Act Amendments
32 of 1974 and guidelines shall, unless otherwise designated in the notice of
33 hearing, be for informational purposes only and shall not be deemed a hearing
34 before the commission within the meaning of § 8-4-205. No appeal may be taken
35 therefrom."

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SECTION 18. Arkansas Code 8-4-213 is amended to read as follows:

"8-4-213. Conclusiveness of commission actions.

(a) If no appeal is taken from an order, rule, regulation, or other decision of the Arkansas Pollution Control and Ecology Commission as provided in A.C.A. § 8-4-222 - 8-4-229, or if the action of the commission is affirmed on appeal, then the action of the commission in the matter shall be deemed conclusive, and the validity and reasonableness thereof shall not be questioned in any other action or proceeding.

(b) However, this subsection shall not preclude the authority of the commission to modify or rescind its actions."

SECTION 19. Arkansas Code 8-4-221 is amended to read as follows:

"8-4-221. Violations of chapter, orders, rules, etc. - Hearing - Orders.

On the basis of the evidence produced at the hearing, the commission shall enter such order as in its opinion will best further the purposes of this chapter. A copy of the order shall be served upon the alleged violator and on such other persons as shall have appeared at the hearing and made written request for notice of the order, in the manner provided by § 8-4-214. The order of the commission shall become final and binding on all parties unless appealed, as provided in A.C.A. § 8-4-222 - 8-4-229, within thirty (30) days after service of the order."

SECTION 20. Arkansas Code 8-4-222 is amended to read as follows:

"8-4-222. An appeal may be taken from any final order, rule, regulation or other final determination of the commission by those parties who have standing and have exhausted their administrative appeals to the circuit court of the county in which the business, industry, municipality, or thing involved is situated, in the manner provided in §§8-4-223 - 8-4-229."

SECTION 21. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

