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1 State of Arkansas
2 79th General Assembly
3 Regular Session, 1993

A Bill

ACT 163 OF 1993
HOUSE BILL 1062

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

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."

Subtitle

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

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

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

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

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

31 *"(4) 'Initial fee' means that fee required by this chapter to be submitted with all*
32 *applications for water, air, and solid waste permits required by §§ 8-4-101 - 8-4-106, 8-4-201*
33 *- 8-4-229, 8-4-301 - 8-4-313, or §§ 8-6-201 - 8-6-217;"*

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

36 *"(1) Following a public hearing and based upon a record calculating the reasonable*

1 *administrative costs of evaluating and taking action on permit applications and of*
2 *implementing and enforcing the terms and conditions of permits and variances, the*
3 *commission shall establish, by regulation, reasonable fees for initial issuance, annual review,*
4 *and modification of water, air, or solid waste permits required by §§ 8-4-101 - 8-4-106,*
5 *8-4-201 - 8-4-229, 8-4-301 - 8-4-313, and 8-6-201 - 8-6-217. These fees shall consist of initial*
6 *fees, annual review fees, and modification fees, as defined in § 8-1-102."*

7

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

9 ***"8-1-106. Definitions - Disclosure statements - Denial of application - Appeal -***
10 ***Regulations.***

11 ***(a) For the purposes of this section:***

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

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

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

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

19 ***(D) Any person who is not now in compliance or has a history of noncompliance with***
20 ***the environmental laws or regulations of this state or any other jurisdiction and who through***
21 ***relationship by affinity or consanguinity or who through any other relationship could be***
22 ***reasonably expected to significantly influence the applicant in a manner which could***
23 ***adversely affect the environment;***

24 ***(2) 'Disclosure statement' means a written statement by the applicant which contains:***

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

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

31 ***(C) A description of the experience and credentials of the applicant, including any***
32 ***past or present permits, licenses, certifications, or operational authorizations relating to***
33 ***environmental regulation;***

34 ***(D) A listing and explanation of any civil or criminal legal actions by government***
35 ***agencies involving environmental protection laws or regulations against the applicant and***

1 *affiliated persons in the ten (10) years immediately preceding the filing of the application,*
2 *including administrative enforcement actions resulting in the imposition of sanctions, permit*
3 *or license revocations or denials issued by any state or federal authority, actions that have*
4 *resulted in a finding or a settlement of a violation, and actions that are pending;*

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

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

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

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

19 *(2) If the applicant is a publicly held company required to file periodic reports under*
20 *the Securities and Exchange Act of 1934, or a wholly owned subsidiary of a publicly held*
21 *company, the applicant shall not be required to submit a disclosure statement, but shall submit*
22 *the most recent annual and quarterly reports required by the Securities and Exchange*
23 *Commission, which provide information regarding legal proceedings in which the applicant*
24 *has been involved. The applicant shall submit such other information as the director may*
25 *require that relates to the competency, reliability, or responsibility of the applicant and*
26 *affiliated persons.*

27 *(c) The director may deny the issuance or transfer of any permit, license, certification,*
28 *or operational authority if he finds, based upon the disclosure statement and other*
29 *investigation which he deems appropriate, that: (1) The applicant has a history of*
30 *noncompliance with the environmental laws or regulations of this state or any other*
31 *jurisdiction;*

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

35 *(3) A person with a history of noncompliance with the environmental laws or*

1 *regulations of this state or any other jurisdiction is affiliated with the applicant to the extent of*
2 *being capable of significantly influencing the practices or operations of the applicant which*
3 *could have impact upon the environment.*

4 *(d) In reaching any decision pursuant to the requirements of this section, the director*
5 *shall consider:*

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

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

10 *(3) Any evidence of rehabilitation following past violations or convictions.*

11 *(e) An applicant for a transfer of a permit shall notify the director at least thirty (30)*
12 *days in advance of the proposed transfer date of the proposed transfer and submit a*
13 *'disclosure statement' as required in this section. The permit is automatically transferred to*
14 *the new permittee unless the director denies the request to transfer within thirty (30) days of*
15 *the receipt of the disclosure statement. Only those reasons set out in subsection (c) of this*
16 *section and the deliberate falsification or omission of the relevant information from the*
17 *disclosure statement as set out in subsection (b)(1) of this section shall constitute grounds for*
18 *the denial of a transfer.*

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

22 *(g) The commission shall adopt regulations necessary to implement this section."*

23

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

25 ***"8-1-201. Legislative intent.***

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

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

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

"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. As such, the director's duties shall include:

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

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

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

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

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

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

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

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

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

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

1 ***"8-1-203. Powers and responsibilities of the Pollution Control and Ecology***
2 ***Commission.***

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

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

6 ***(1) Promulgation of rules and regulations implementing the substantive statutes***
7 ***charged to the department for administration;***

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

11 ***(3) Promulgation of rules and regulations governing administrative procedures for***
12 ***challenging or contesting department actions;***

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

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

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

19 ***(7) Make recommendations to the director regarding overall policy and***
20 ***administration of the department, provided, however, that the director shall always remain***
21 ***within the plenary authority of the Governor; and***

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

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

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

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

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

1 *administrative procedures.*

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

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

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

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

10

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

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

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

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

24

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

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

30 ***(4) 'Pollution' means such contamination or other alteration of the physical, chemical, or***
31 ***biological properties of any waters of the state, or such discharge of any liquid, gaseous, or***
32 ***solid substance in any waters of the state as will, or is likely to, render the waters harmful,***
33 ***detrimental, or injurious to public health, safety, or welfare; to domestic, commercial,***
34 ***industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild***
35 ***animals, birds, fish, or other aquatic life;"***

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

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

(a) CRIMINAL PENALTIES.

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

(B) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than one (1) year or a fine of not more than twenty-five thousand dollars (\$25,000), or subject to both such fine and imprisonment.

For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

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

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

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

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

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

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

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

(B) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than twenty (20) years or a fine of not

1 *more than two hundred fifty thousand dollars (\$250,000), or subject to both such fine and*
2 *imprisonment. For the purpose of fines only, each day or part of a day during which the*
3 *violation is continued or repeated shall constitute a separate offense.*

4 *(4) Notwithstanding the limits on fines set in subdivisions (1)-(3) above, if a person*
5 *convicted under any of the above subdivisions has derived or will derive pecuniary gains from*
6 *commission of the offenses, then he may be sentenced to pay a fine not to exceed twice the*
7 *amount of the pecuniary gain. (b) CIVIL PENALTIES. The department is*
8 *authorized to institute a civil action in any court of competent jurisdiction to accomplish any*
9 *or all of the following:*

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

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

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

17 *(4) Assess civil penalties in an amount not to exceed ten thousand dollars*
18 *(\$10,000) per day for violations of this subchapter and of any rules, regulations, permits, or*
19 *plans issued pursuant thereto; or*

20 *(5) Recover civil penalties assessed pursuant to subsection (c) of this section.*

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

32 *(d)(1) Before assessing a civil penalty under subsection (c) above, the director shall*
33 *provide public notice of and a reasonable opportunity to comment on the proposed issuance of*
34 *such order. If the civil penalty is being assessed under an order on consent, the order shall not*
35 *be effective until thirty (30) days after the publication of notice of such order. Notice shall*

1 *also be given to each member of the commission.*

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

3 ***(A) the identity of the person or facility alleged to be in violation;***

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

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

7 ***(D) the type of administrative action proposed (i.e. consent order, notice of***
8 ***violation, emergency order);***

9 ***(E) the amount of penalty to be assessed.***

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

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

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

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

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

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

35 ***(3) All moneys collected which represent the costs, expenses, or damages of***

1 *another agency or subdivision of the state shall be distributed to the appropriate*
2 *governmental entity.*

3 *(g)(1) Any governmental entity permitted to operate a Publicly Owned Treatment*
4 *Works (POTW) shall have the authority, pursuant to duly promulgated ordinances or*
5 *regulations, to collect in a court of competent jurisdiction civil or criminal penalties in an*
6 *amount not to exceed one thousand dollars (\$1,000), for each violation by industrial users of*
7 *pretreatment standards or requirements.*

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

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

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

14 *(i) Solicitation or conspiracy, as defined by subchapters 3 and 4 of chapter 3 of the*

15 *Arkansas Criminal Code, to commit any criminal act proscribed by this section and §§*

16 *8-6-204 and 8-7-204 shall be punishable as follows:*

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

21 *(2) Any solicitation or conspiracy to commit an offense under this section*
22 *which is a felony subject to fines of fifty thousand dollars (\$50,000) per day or imprisonment*
23 *up to five (5) years shall be a felony subject to fines up to thirty-five thousand dollars*
24 *(\$35,000) per day or imprisonment up to two (2) years, or both such fine and imprisonment.*

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

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

35 *(j) In cases considering suspension of sentence or probation, efforts or commitments by*

1 *the defendant to remediate any adverse environmental effects caused by his activities may be*
2 *considered by the court to be restitution as contemplated by § 5-4-301.*

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

6

7 ***SECTION II. Arkansas Code 8-4-201 is amended to read as follows:***

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

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

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

13 ***(2) Investigations and Surveys.***

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

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

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

20 ***(3) Standards. To establish and alter such reasonable pollution standards for any***
21 ***waters of this state in relation to the use to which they are or may be put as it shall deem***
22 ***necessary for the purpose of this chapter; (4) Program. To prepare a comprehensive***
23 ***program for the elimination or reduction of the pollution of the waters of this state;***

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

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

30

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

32 ***"8-4-202. Rules and regulations.***

33 ***(a) The Arkansas Pollution Control and Ecology Commission is given and charged***
34 ***with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules***
35 ***and regulations implementing or effectuating the powers and duties of the department and***

1 *the commission under this chapter.*

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

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

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

11 *(3) Water quality standards, performance standards, and pretreatment standards.*

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

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

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

22 *(d) (1) Prior to the adoption, amendment, or repeal of any rule or regulation or prior*
23 *to suspending the processing of a type or category of permits or the declaration of a*
24 *moratorium on a type or category of permits the commission shall give at least twenty (20)*
25 *days notice of its intended action. The notice shall include a statement of the substance of the*
26 *intended action, a description of the subjects and issues involved, and the time, place, and*
27 *manner in which interested persons may make comments. The notice shall be mailed to all*
28 *persons who have requested advance notice of rulemaking proceedings. The notice shall also*
29 *be published at least twice in newspapers having a general statewide circulation and in the*
30 *appropriate industry, trade, or professional publications the commission may select.*

31 *(2) All interested parties shall be afforded a reasonable opportunity to submit written*
32 *data, information, views, opinions, and arguments and to make oral statements concerning*
33 *the proposed rule, regulation, suspension, or moratorium prior to a decision being rendered*
34 *by the commission. All written material, photographs, published material, electronic media*
35 *received by the commission shall be preserved and, along with a record of all oral comments*

1 *made at any public hearing, shall become an element of the record of rulemaking. Any*
2 *person who considers himself injured in his person, business or property by final agency*
3 *action under this section shall be entitled to judicial review of the action under this section.*

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

9 *(4) The commission shall compile and maintain a record of rulemaking that shall*
10 *contain:*

11 *(A) A copy of all notices described in subdivision (d) of this section,*
12 *and a concise general statement of the basis and purpose of the proposed rule, which shall*
13 *include a written explanation of the necessity of the regulation and a demonstration that any*
14 *technical regulation or technical standard is based on generally accepted scientific knowledge*
15 *and engineering practices. For any standard or regulation that is identical to a regulation*
16 *promulgated by the United States Environmental Protection Agency, this portion of the*
17 *record may be satisfied by reference to the Code of Federal Regulations. In all other cases the*
18 *department must provide its own justification with appropriate references to the scientific and*
19 *engineering literature or written studies conducted by the department.*

20 *(B) Copies of all written material, photographs, published materials, electronic*
21 *media, and the record of all oral comments received by the commission during the public*
22 *comment period and hearings.*

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

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

33 *(e) If the commission determines that imminent peril to the public health, safety, or*
34 *welfare requires immediate change in the rules, or immediate suspension, or moratorium on*
35 *categories or types of permits, it may, after documenting the facts and reasons, declare an*

1 *emergency and implement emergency rules, regulations, suspensions, or moratoriums. No*
2 *rule, regulation, suspension, or moratorium adopted under an emergency declaration shall*
3 *be effective for longer than ninety (90) days. The imminent loss of federal funding,*
4 *certification or authorization for any program administered by the department shall*
5 *establish a prima facie case of imminent peril to the public health, safety or welfare."*
6

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

8 ***"8-4-203. Permits generally.***

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

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

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

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

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

27 ***(c) Whenever the department proposes to grant or deny any permit application, it***
28 ***shall cause notice of its proposed action to be published in a newspaper of general circulation***
29 ***in the county in which the facility that is the subject of the application is located. The notice***
30 ***shall afford any interested party thirty (30) calendar days in which to submit comments on***
31 ***the proposed permit action. Not less than fifteen (15) days after the conclusion of the public***
32 ***comment period, the department shall announce in writing its final decision regarding the***
33 ***permit application. The department's final decision shall include a response to each issue***
34 ***raised in any public comments received during the public comment period. In the case of any***
35 ***discharge limit, emission limit, environmental standard, analytical method or monitoring***

1 *requirements the record of the proposed action and the response shall include a written*
2 *explanation of the rationale for the proposal, demonstrating that any technical requirements*
3 *or standards are based upon generally accepted scientific knowledge and engineering*
4 *practices. For any standard or requirement that is identical to a duly promulgated and*
5 *applicable regulation, this demonstration may be satisfied by reference to the regulation. In*
6 *all other cases the department must provide its own justification with appropriate reference to*
7 *the scientific and engineering literature or written studies conducted by the department.*

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

10 *(e) Only those persons who submit comments on the record during the public comment*
11 *period and the applicant shall have standing to appeal the decision of the department to the*
12 *commission."*

13

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

15 ***"8-4-204 Permits - Revocation***

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

19 ***(1) Violation of any condition of the permit;***

20 ***(2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant***
21 ***facts; or***

22 ***(3) Change in any applicable regulation or change in any preexisting condition***
23 ***affecting the nature of the discharge that requires either a temporary or permanent reduction***
24 ***or elimination of the permitted discharge."***

25

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

27 ***"8-4-205 Permits - Hearings upon denial, revocation, or modification and other***
28 ***permit actions.***

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

34 ***(b)(1) Only those interested person, other than the applicant, who have submitted***
35 ***comments on the record regarding a proposed permit action during the public comment***

1 *period shall have standing to request a hearing by the commission in connection therewith,*
2 *upon written application made within thirty (30) days after the date of the department_s*
3 *final decision regarding the permit action.*

4 *(2) No interested party requesting a hearing under this subsection may raise any*
5 *issue in the hearing that was not raised in the public comments unless the party raising the*
6 *issue shows good cause why such issue could not, with reasonable diligence, have been*
7 *discovered and presented during the public comment period. The limitation in this subsection*
8 *shall not restrict the issues that may be addressed by the applicant in any appeal.*

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

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

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

24 *(3) At this preliminary hearing, the hearing officer shall weigh the equities of any*
25 *request for expedited review and advance the case on the administrative docket as*
26 *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 proceedings such that the*
29 *appeal will be submitted to the commission for final commission action within one hundred*
30 *twenty (120) days after the preliminary hearing unless the parties mutually agree to a*
31 *longer period of time or the hearing officer establishes a longer period of time for just cause.*

32 *(6) During the pendency of the appeal to the commission:*

33 *(A) The denial of a permit shall stand,*

34 *(B) The issuance, modification, or revocation of a permit or that part of a*
35 *permit which is the subject of the appeal shall be stayed.*

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

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

7
8 ***SECTION 16. Arkansas Code 8-4-207(6) is amended to read as follows:***

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

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

14 ***(ii) The department shall deny any claim for confidentiality for the name and address***
15 ***of any permit applicant or permittee or for any NPDES permit applications, NPDES***
16 ***permits, and effluent data.***

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

20 ***(iv) Any person adversely affected by a determination by the department on a claim***
21 ***of confidentiality may appeal the determination as provided in A.C.A. § 8-4-222 and 8-4-***
22 ***223.***"

23
24 ***SECTION 17. Arkansas Code 8-4-208(c) is amended to read as follows:***

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

31
32 ***SECTION 18. Arkansas Code 8-4-213 is amended to read as follows:***

33 ***"8-4-213. Conclusiveness of commission actions.***

34 ***(a) If no appeal is taken from an order, rule, regulation, or other decision of the Arkansas***
35 ***Pollution Control and Ecology Commission as provided in A.C.A. § 8-4-222 - 8-4-229, or if***

1 *the action of the commission is affirmed on appeal, then the action of the commission in the*
2 *matter shall be deemed conclusive, and the validity and reasonableness thereof shall not be*
3 *questioned in any other action or proceeding.*

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

6
7 ***SECTION 19. Arkansas Code 8-4-221 is amended to read as follows:***

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

9 ***On the basis of the evidence produced at the hearing, the commission shall enter such***
10 ***order as in its opinion will best further the purposes of this chapter. A copy of the order shall***
11 ***be served upon the alleged violator and on such other persons as shall have appeared at the***
12 ***hearing and made written request for notice of the order, in the manner provided by §***
13 ***8-4-214. The order of the commission shall become final and binding on all parties unless***
14 ***appealed, as provided in A.C.A. § 8-4-222 - 8-4-229, within thirty (30) days after service of***
15 ***the order."***

16
17 ***SECTION 20. Arkansas Code 8-4-222 is amended to read as follows:***

18 ***"8-4-222. An appeal may be taken from any final order, rule, regulation or other***
19 ***final determination of the commission by those parties who have standing and have exhausted***
20 ***their administrative appeals to the circuit court of the county in which the business, industry,***
21 ***municipality, or thing involved is situated, in the manner provided in §§8-4-223 - 8-4-229."***

22
23 ***SECTION 21. All provisions of this act of a general and permanent nature are***
24 ***amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision***
25 ***Commission shall incorporate the same in the Code.***

26
27 ***SECTION 22. If any provision of this act or the application thereof to any person or***
28 ***circumstance is held invalid, such invalidity shall not affect other provisions or applications of***
29 ***the act which can be given effect without the invalid provision or application, and to this end***
30 ***the provisions of this act are declared to be severable.***

31
32 ***SECTION 23. All laws and parts of laws in conflict with this act are hereby repealed.***

33
34 */s/J. Miller, et al*

35

As Engrossed: 1/25/93 1/26/93 2/3/93 2/4/93 2/8/93

HB 1062

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APPROVED: 2/18/93

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