

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4

As Engrossed: S2/21/97

A Bill

ACT 401 OF 1997
HOUSE BILL 1563

5 *By: Representatives Sheppard, Wallis, Lancaster, Johnson, and Horn*
6 *By: Senator Mahony*
7

For An Act To Be Entitled

9 "AN ACT TO ENCOURAGE LONG-TERM ENVIRONMENTAL PROJECTS; AND
10 FOR OTHER PURPOSES."

Subtitle

13 "AN ACT TO ENCOURAGE LONG-TERM
14 ENVIRONMENTAL PROJECTS."
15

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
17

SECTION 1. Legislative Findings and Intent.

19 The General Assembly hereby finds that many areas of the state would
20 benefit from long-term environmental remediation projects that significantly
21 improve the effects caused by industrial or extractive activities. However,
22 commitments by private enterprise to remedy such damages are discouraged by
23 the prospect of civil liability based upon rigid application of state water
24 quality standards to the enterprises activities. The purpose of this act is
25 to preserve the states approach to establishing water quality standards,
26 while also encouraging private enterprises to make significant improvements to
27 closed or abandoned sites that are of such magnitude that more than three (3)
28 years will be required to complete the project.
29

SECTION 2. Definitions and Applicability.

31 For the purposes of this act:

32 (1) "Long-term Improvement Project" or "Project" means any remediation
33 or reclamation project at closed or abandoned:

34 (A) Mineral Extraction Sites;

35 (B) Solid Waste Management Units as defined pursuant to the
36 Arkansas Hazardous Waste Management Act;

1 (C) Oil and Gas Extraction Sites;

2 (D) Brownfield Sites as defined in Act 125 of 1995 or as may be
3 amended; and

4 (E) Hazardous Substance Sites listed on the National Priority
5 List (42 U.S.C. Section 9605), or State Priority List (Arkansas Code 8-7-
6 509(e), or as may be amended.

7 (2) "Water Quality Standard" means standards developed through
8 administrative rulemaking by the Commission;

9 (3) "Commission" means the Arkansas Pollution Control and Ecology
10 Commission; and

11 (4) "Department" means the Arkansas Department of Pollution Control and
12 Ecology.

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14 SECTION 3. Procedures for approval of environmental projects, contents
15 of applications, and public notice.

16 (a) A petitioner seeking approval of a change in water quality
17 standards to accommodate a long-term environmental improvement project shall
18 file with the Department a Notice of Intent, which includes as a minimum:

19 (1) A description of the water body or stream segment affected by
20 the project;

21 (2) The existing ambient water quality for the use of criteria at
22 issue;

23 (3) The affected water quality standard;

24 (4) The modifications sought;

25 (5) The proposed remediation activities;

26 (6) A proposed Remediation Plan, which shall contain:

27 (A) A description of the existing conditions, including
28 identification of the conditions limiting the attainment of the water quality
29 standards;

30 (B) A description of the proposed water quality standard
31 modification, both during and post project;

32 (C) A description of the proposed remediation plan; and

33 (D) The anticipated collateral effects, if any, of the
34 Remediation Plan; and

35 (7) A schedule for implementing the Remediation Plan that ensures
36 that the post project water quality standards are met as soon as reasonably

1 practicable.

2 (b) The department shall cause notice of the proposed project and
3 associated water quality standard changes described in subsection (a) to be
4 published for public notice and comment in the same manner as provided for
5 permit applications in Arkansas Code 8-4-203(b), and shall advise the public
6 that the details of the proposed project are available for public review.

7 (c) After considering comments from the public, the department shall
8 notify the petitioner as to whether the proposed project is approved or
9 denied. The department may deny approval of a project if it reasonably
10 concludes that the plan is not complete, the plan is not technically sound,
11 the schedule is unrealistic, the plan will not have an overall beneficial
12 effect for the environment, or other appropriate reasons. Any department
13 determination on the approval or denial of a project is subject to the appeal
14 procedures applicable to permitting decisions set out in Arkansas Code 8-4-
15 205.

16 (d) Upon approval of the project for further development, the
17 petitioner shall prepare documentation required for third-party rulemaking by
18 Arkansas Code 8-4-202 and established in administrative procedures.

19

20 SECTION 4. Modification of Water Quality Standards.

21 (a) The commission may approve a modification where the water quality
22 standard is not being maintained due to conditions which may, in part or in
23 whole, be corrected through the implementation of long-term measures. The
24 commission shall establish such subcategory of use and modify such general and
25 specific standards as it deems appropriate to reflect such modification while
26 ensuring that the fishable/swimmable use is maintained. In all water quality
27 standard changes associated with long-term environmental projects, the
28 remedial action plan described in subsection (a) of Section 3 of this act
29 shall be incorporated by reference in the statement of basis and purpose of
30 the rule and shall be considered an essential condition of the modified water
31 quality standard.

32 (b) Once the commission approves a water quality standard modification,
33 the department shall ensure that conditions and limitations designed to
34 achieve compliance with the plan are established in applicable discharge
35 permits, consent administrative orders, or such other enforcement measures
36 deemed appropriate by the department. The department may allow modifications

1 by the petitioner to the remediation plan and schedule as is deemed
2 appropriate, provided that any such modifications to the original remedial
3 action plan shall not render the project significantly less protective of the
4 applicable use subcategory. Should the department find that the petitioner is
5 not acting in good faith to complete the project in accordance with the
6 approved plan, applicable and appropriate enforcement authority may be
7 exercised subject to appeal to the commission.

8 (c) The department or the petitioner shall report annually to the
9 commission on the progress of the project.

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11 SECTION 5. Project Completion.

12 At the end of the project the post project water quality standards shall
13 be in full force and effect.

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15 SECTION 6. All provisions of this act of a general and permanent nature
16 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
17 Revision Commission shall incorporate the same in the Code.

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19 SECTION 7. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.

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25 SECTION 8. All laws and parts of laws in conflict with this act are
26 hereby repealed.

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29 */s/Sheppard et al*

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31 APPROVED:3-07-97

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