

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 832 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H3/21/07

A Bill

HOUSE BILL 2602

5 By: Representatives S. Prater, House
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For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE §§ 8-4-203 AND 8-5-
10 703 TO REQUIRE FINANCIAL ASSURANCE FOR
11 NONMUNICIPAL DOMESTIC SEWAGE TREATMENT WORKS IN
12 THE STATE OF ARKANSAS; AND FOR OTHER PURPOSES.
13

Subtitle

14 AN ACT TO REQUIRE FINANCIAL ASSURANCE TO
15 OPERATE NONMUNICIPAL DOMESTIC SEWAGE
16 TREATMENT WORKS IN THE STATE OF
17 ARKANSAS.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 8-4-203 is amended to read as follows:
24 8-4-203. Permits generally.

25 (a) The Arkansas Department of Environmental Quality or its successor
26 is given and charged with the power and duty to issue, continue in effect,
27 revoke, modify, or deny permits, under such conditions as it may prescribe:

28 (1) To prevent, control, or abate pollution;

29 (2) For the discharge of sewage, industrial waste, or other
30 wastes into the waters of the state, including the disposal of pollutants
31 into wells; and

32 (3) For the installation, modification, or operation of disposal
33 systems or any part of them.

34 (b)(1)(A)(i) The department shall not issue, modify, or renew a
35 National Pollutant Discharge Elimination System or state permit for a



1 nonmunicipal domestic sewage treatment system serving two (2) or more
2 individually owned, rented, or temporarily occupied lots or dwellings, and
3 using known technology, without the permit applicant first demonstrating to
4 the department its financial ability to cover the estimated costs of
5 operating and maintaining the sewage treatment system for a minimum period of
6 five (5) years.

7 (ii) Each permit application for a nonmunicipal
8 domestic sewage treatment system serving two (2) or more lots or dwellings
9 and using known technology shall be accompanied by a cost estimate for a
10 third party to operate and maintain the nonmunicipal domestic sewage
11 treatment works on an annual basis for a period of five (5) years.

12 (B)(i) The department shall not issue, modify, or renew a
13 National Pollutant Discharge Elimination System permit or a state permit for
14 a nonmunicipal domestic sewage treatment system serving two (2) or more
15 individually owned, rented, or temporarily occupied lots or dwellings, and
16 using new technology that has not been previously reviewed and approved by
17 the department, without the permit applicant first demonstrating to the
18 department its financial ability to replace the nonmunicipal domestic sewage
19 treatment system using new technology with one using known technology
20 acceptable to the department.

21 (ii) Each permit application for a
22 nonmunicipal domestic sewage treatment system serving two (2) or more lots or
23 dwellings and using new technology shall be accompanied by a reasonable cost
24 estimate to replace the nonmunicipal domestic treatment sewage system using
25 new technology with a nonmunicipal domestic treatment sewage system using
26 known technology.

27 (2) This minimum financial assurance may be demonstrated to the
28 department:

29 (A) By obtaining insurance;

30 (B) By obtaining a letter of credit;

31 (C) By obtaining a surety bond;

32 (D) By obtaining a trust fund or an escrow account; or

33 (E) Through the use of a combination of insurance, letter
34 of credit, surety bond, trust fund, or escrow account.

35 (3)(A) The department shall have the discretion to set the
36 minimum amount of financial assurance required for each permit under this

1 subsection.

2 (B) This minimum amount of financial assurance may exceed
3 the cost estimates submitted with the permit application.

4 (4) Any financial instrument required by this subchapter shall
5 be posted to the benefit of the department and shall remain in effect for the
6 life of the permit.

7 (5) It is explicitly understood that the department shall not
8 directly operate and shall not be responsible for the operation of any
9 nonmunicipal domestic sewage treatment system.

10 ~~(b)(1)(c)(1)~~ When any application for the issuance of a new permit or
11 a major modification of an existing permit is filed with the department, the
12 department shall cause notice of the application to be published in a
13 newspaper of general circulation in the county in which the proposed facility
14 is to be located.

15 (2) The notice required by subdivision ~~(b)(1)(c)(1)~~ of this
16 section shall advise that any interested person may request a public hearing
17 on the permit application by giving the department a written request within
18 ten (10) days of the publication of the notice.

19 (3) Should a hearing be deemed necessary by the department or in
20 the event the department desires such a hearing, the department shall
21 schedule a public hearing and shall notify by first class mail the applicant
22 and all persons who have submitted comments of the date, time, and place of
23 the public hearing.

24 ~~(e)(1)(A)(d)(1)(A)~~ Whenever the department proposes to grant or deny
25 any permit application, it shall cause notice of its proposed action to be
26 published in either:

27 (i) A newspaper of general circulation in the county
28 in which the facility that is the subject of the application is located; or

29 (ii) In the case of a statewide permit, in a
30 newspaper of general circulation in the state.

31 (B) The notice shall afford any interested party thirty
32 (30) calendar days in which to submit comments on the proposed permit action.

33 (C) At the conclusion of the public comment period, the
34 department shall announce in writing its final decision regarding the permit
35 application.

36 (2)(A)(i) The department's final decision shall include a

1 response to each issue raised in any public comments received during the
2 public comment period. Such response shall manifest reasoned consideration of
3 the issues raised by the public comments and shall be supported by
4 appropriate legal, scientific, or practical reasons for accepting or
5 rejecting the substance of the comment in the department's permitting
6 decision.

7 (ii) For the purposes of this section, response to
8 comments by the department should serve the roles of both developing the
9 record for possible judicial review of an individual permitting action and as
10 a record for the public's review of the department's technical and legal
11 interpretations on long-range regulatory issues.

12 (iii) Nothing in this section, however, shall be
13 construed as limiting the department's authority to raise all relevant issues
14 of regulatory concern upon adjudicatory review of the commission of a
15 particular permitting action.

16 (B)(i) In the case of any discharge limit, emission limit,
17 environmental standard, analytical method, or monitoring requirements, the
18 record of the proposed action and the response shall include a written
19 explanation of the rationale for the proposal, demonstrating that any
20 technical requirements or standards are based upon generally accepted
21 scientific knowledge and engineering practices.

22 (ii) For any standard or requirement that is
23 identical to a duly promulgated and applicable regulation, this demonstration
24 may be satisfied by reference to the regulation. In all other cases, the
25 department must provide its own justification with appropriate reference to
26 the scientific and engineering literature or written studies conducted by the
27 department.

28 ~~(d)~~(1)(e)(1) All costs of publication of notices of applications and
29 notices of proposals to grant permits under this section shall be the
30 responsibility of the applicant.

31 (2) All costs of publication of notices of proposals to deny a
32 permit under this section shall be the responsibility of the department.

33 (3) Any moneys received pursuant to subsection ~~(d)~~(e) of this
34 section shall be classified as refunds to expenditures.

35 ~~(e)~~(f) Only those persons who submit comments on the record during the
36 public comment period and the applicant shall have standing to appeal the

1 decision of the department to the Arkansas Pollution Control and Ecology
2 Commission.

3 ~~(f)(1)~~(g)(1) Permits for the discharge of pollutants into the waters
4 of the state or for the prevention of pollution of the waters of the state
5 shall remain freely transferable, provided the applicant for the transfer
6 notifies the Director of the Arkansas Department of Environmental Quality at
7 least thirty (30) days in advance of the proposed transfer date and submits a
8 disclosure statement as required by § 8-1-106.

9 (2) Only those reasons set out in §§ 8-1-106(b)(1) and 8-1-
10 106(c) shall constitute grounds for denial of a transfer.

11 (3) The permit is automatically transferred to the new permittee
12 unless the director denies the request within thirty (30) days of the receipt
13 of the disclosure statement.

14 ~~(g)~~(h) In the event of voluminous comments, including, but not limited
15 to a petition, the department may require the designation of a representative
16 to accept any notices required by this section.

17 ~~(h)~~(i) The notice provisions of subsections ~~(b) and (e)~~ (c) and (d) of
18 this section shall not apply to permit transfers or minor modifications of
19 *existing permits*.

20 (j) This section in no way restricts local and county government
21 entities from enacting more stringent ordinances regulating nonmunicipal
22 domestic treatment sewage systems in Arkansas.

23

24 SECTION 2. Arkansas Code § 8-5-703 is amended to read as follows:

25 8-5-703. Financial assurance requirements for subsequently permitted
26 common sewage systems.

27 ~~(a)(1) The Arkansas Department of Environmental Quality shall not~~
28 ~~permit or register any common sewage system serving two (2) or more occupied~~
29 ~~lots, residences, businesses, or other discernible occupied units without the~~
30 ~~applicant's first demonstrating to the department its financial ability to~~
31 ~~cover the costs of operating and maintaining the system for a period of five~~
32 ~~(5) years.~~

33 ~~(2) This minimal financial assurance may be demonstrated to the~~
34 ~~department:~~

35 ~~(A) By obtaining insurance;~~

36 ~~(B) By passing a financial test;~~

1 ~~(C) By obtaining a letter of credit;~~
2 ~~(D) By obtaining a surety bond;~~
3 ~~(E) By obtaining a trust fund or escrow account;~~
4 ~~(F) Through the use of a combination of insurance,~~
5 ~~financial test, letter of credit, surety bond, trust fund, or escrow account;~~
6 ~~or~~

7 ~~(G) By an alternative mechanism approved by the~~
8 ~~department.~~

9 ~~(b) Any application for the registration or permitting of a common~~
10 ~~sewage system shall be accompanied by a reasonable estimation of the yearly~~
11 ~~operating and maintenance costs of the system, upon which the permitting or~~
12 ~~registering agency shall base the minimal amount of financial assurance~~
13 ~~required by this subchapter.~~

14 ~~(c) Any financial instrument required by this subchapter shall be~~
15 ~~posted to the benefit of the department.~~

16 ~~(d) It is explicitly understood that the department shall not directly~~
17 ~~operate and shall not be responsible for the operation of any common sewage~~
18 ~~system.~~

19 (a)(1)(A) The Arkansas Department of Environmental Quality shall not
20 issue, modify, or renew a National Pollutant Discharge Elimination System
21 permit or a state permit for a common sewage system serving two (2) or more
22 individually owned, rented, or temporarily occupied lots or dwellings, and
23 using known technology, without the permit applicant first demonstrating to
24 the department its financial ability to cover the estimated costs of
25 operating and maintaining the common sewage system for a minimum period of
26 five (5) years.

27 (B) Each permit application shall be accompanied by a cost
28 estimate for a third party to operate and maintain the common sewage system
29 on an annual basis for a period of five (5) years.

30 (2)(A) The department shall not issue, modify, or renew a
31 National Pollutant Discharge Elimination System permit or a state permit for
32 a common sewage system serving two (2) or more individually owned, rented, or
33 temporarily occupied lots or dwellings, and using new technology that has not
34 been previously reviewed and approved by the department, without the permit
35 applicant first demonstrating to the department its financial ability to
36 replace the common sewage system using new technology with one using known

1 technology acceptable to the department.

2 (B) Each permit application shall be accompanied by a
3 reasonable cost estimate to replace the common sewage system using new
4 technology with one using known technology.

5 (b) This minimum financial assurance may be demonstrated to the
6 department:

7 (1) By obtaining insurance;

8 (2) By obtaining a letter of credit;

9 (3) By obtaining a surety bond;

10 (4) By obtaining a trust fund or an escrow account; or

11 (5) Through the use of a combination of insurance, letter of
12 credit, surety bond, trust fund, or escrow account.

13 (c)(1) The department shall have the discretion to set the minimum
14 amount of financial assurance required for each permit.

15 (2) This minimum amount may exceed the cost estimates submitted
16 with the permit application.

17 (d) Any financial instrument required by this subchapter shall be
18 posted to the benefit of the department and shall remain in effect for the
19 life of the permit.

20 (e) It is explicitly understood that the department shall not directly
21 operate and shall not be responsible for the operation of any sewage system.

22 (f) This section in no way restricts local and county government
23 entities from enacting more stringent ordinances regulating nonmunicipal
24 domestic treatment sewage systems in Arkansas.

25
26 */s/ S. Prater, et al*

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28 **APPROVED: 4/2/2007**