

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 409 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H2/19/09

A Bill

HOUSE BILL 1463

5 By: Representatives Greenberg, Reynolds
6
7

8 **For An Act To Be Entitled**

9 AN ACT TO MODIFY THE FINANCIAL ASSURANCE
10 REQUIREMENTS FOR NONMUNICIPAL DOMESTIC SEWAGE
11 TREATMENT WORKS AND FACILITIES IN CHRONIC
12 NONCOMPLIANCE IN THE STATE OF ARKANSAS; AND FOR
13 OTHER PURPOSES.
14

15 **Subtitle**

16 TO MODIFY THE FINANCIAL ASSURANCE
17 REQUIREMENTS FOR NONMUNICIPAL DOMESTIC
18 SEWAGE TREATMENT WORKS AND FACILITIES.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 8-4-203(b), concerning water permits
24 generally, is amended to read as follows:

25 (b)(1)(A)(i) The department shall not issue, modify, or renew a
26 National Pollutant Discharge Elimination System permit or state permit for a
27 nonmunicipal domestic sewage treatment ~~system serving two (2) or more~~
28 ~~individually owned, rented, or temporarily occupied lots or dwellings, and~~
29 ~~using known technology,~~ works without the permit applicant first
30 demonstrating to the department its financial ability to cover the estimated
31 costs of operating and maintaining the nonmunicipal domestic sewage treatment
32 ~~system~~ works for a minimum period of five (5) years.

33 (ii) For purposes of this section, "nonmunicipal
34 domestic sewage treatment works" means a device or system operated by an
35 entity other than a city, town, borough, county, or sewer improvement



1 district, that treats, in whole or in part, waste or wastewater from humans
 2 or household operations and must continuously operate to protect human health
 3 and the environment despite a permittee's failure to maintain or operate the
 4 treatment works.

5 (iii) State or federal facilities, schools,
 6 universities, and colleges are specifically exempted from the requirements of
 7 this section.

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

14 (B)(i) The department shall not issue, or modify, or renew
 15 a National Pollutant Discharge Elimination System permit or a state permit
 16 for a nonmunicipal domestic sewage treatment ~~system serving two (2) or more~~
 17 ~~individually owned, rented, or temporarily occupied lots or dwellings, and~~
 18 ~~using~~ works that proposes to use a new technology that, in the discretion of
 19 the department, cannot be verified to meet permit requirements, that has not
 20 ~~been previously reviewed and approved by the department, without the permit~~
 21 ~~applicant first demonstrating to the department its financial ability to~~
 22 ~~replace the nonmunicipal domestic sewage treatment system using new~~
 23 ~~technology with one~~ a nonmunicipal domestic sewage treatment works that uses
 24 ~~using known~~ technology acceptable to the department.

25 ~~(ii) Each permit application for a nonmunicipal domestic~~
 26 ~~sewage treatment system serving two (2) or more lots or dwellings and using~~
 27 ~~new technology shall be accompanied by a reasonable cost estimate to replace~~
 28 ~~the nonmunicipal domestic treatment sewage system using new technology with a~~
 29 ~~nonmunicipal domestic treatment sewage system using known technology. Each~~
 30 ~~permit application for a nonmunicipal domestic sewage treatment works that~~
 31 ~~proposes to use a new technology that in the discretion of the department~~
 32 ~~cannot be verified to meet permit requirements shall be accompanied by a cost~~
 33 ~~estimate to replace the proposed system with a nonmunicipal domestic sewage~~
 34 ~~treatment works that uses technology acceptable to the department.~~

35 (2) ~~This minimum financial assurance may~~ The applicant's
 36 financial ability to operate and maintain the nonmunicipal domestic sewage

1 treatment works for a period of five (5) years shall be demonstrated to the
2 department by:

3 (A) ~~By obtaining~~ Obtaining insurance that specifically
4 covers operation and maintenance costs;

5 (B) ~~By obtaining~~ Obtaining a letter of credit;

6 (C) ~~By obtaining~~ Obtaining a surety bond;

7 (D) ~~By obtaining~~ Obtaining a trust fund or an escrow
8 account; or

9 (E) ~~Through the use of~~ Using a combination of insurance,
10 letter of credit, surety bond, trust fund, or escrow account.

11 (3)~~(A)~~ ~~The department shall have the discretion to set the~~
12 ~~minimum amount of financial assurance required for each permit under this~~
13 ~~subsection, may reduce or waive the amount of the required financial~~
14 ~~assurance if the permit applicant can demonstrate to the department's~~
15 ~~satisfaction that:~~

16 (A) For a renewal permit, during the five (5) years
17 preceding the application for a renewal permit, the nonmunicipal domestic
18 sewage treatment works facility has:

19 (i) Remained in continuous operation;

20 (ii) Received no more than three (3) permit
21 violations within a six-month period as set out in the permit issued by the
22 department;

23 (iii) Maintained the services of a certified
24 wastewater treatment operator, where applicable;

25 (iv) Remained financially solvent; and

26 (v) Operated the facility's nonmunicipal domestic
27 sewage treatment works to prevent the discharge of waterborne pollutants in
28 unacceptable concentrations to the surface waters or groundwater of the state
29 as defined in the permit or as defined in the state's water quality
30 standards; or

31 (B) ~~This minimum amount of financial assurance may exceed~~
32 ~~the cost estimates submitted with the permit application, For a new permit,~~
33 that the reduction or waiver is necessary to accommodate important economic
34 or social development in the area of the proposed nonmunicipal domestic
35 sewage treatment works facility and that the applicant has shown a history of
36 financial responsibility and compliance with regulatory requirements in other

1 relevant ventures.

2 (4) The department has discretion to withdraw a reduction or
3 waiver granted under this subsection at any time in order to protect human
4 health or the environment.

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

8 ~~(5)(6)~~ It is explicitly understood that the department shall not
9 directly operate and shall not be responsible for the operation of any
10 nonmunicipal domestic sewage treatment ~~system~~ works.

11
12 SECTION 2. Arkansas Code § 8-5-703 is amended to read as follows:

13 8-5-703. Financial assurance requirements for subsequently permitted
14 common sewage systems.

15 (a)(1)(A) The Arkansas Department of Environmental Quality may require
16 a permitted common sewage system which is in chronic noncompliance to
17 demonstrate shall not issue, modify, or renew a National Pollutant Discharge
18 Elimination System permit or a state permit for a common sewage system
19 servicing two (2) or more individually owned, rented, or temporarily occupied
20 lots or dwellings, and using known technology, without the permit applicant
21 first demonstrating to the department its financial ability to cover the
22 estimated costs of operating and maintaining the common sewage system for a
23 minimum period of five (5) years.

24 (B) ~~Each permit application shall be accompanied~~ The
25 department may require the permitted common sewage system that is in chronic
26 noncompliance to submit by a cost estimate for a third party to operate and
27 maintain the common sewage system ~~on an annual basis~~ each year for a period
28 of five (5) years.

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

1 sewage system facility is in chronic noncompliance and the common sewage
2 system facility proposes to use new technology that in the discretion of the
3 department can not be verified to meet permit requirements.

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

7 (b) The applicant's financial ability to operate and maintain the
8 system for a period of five (5) years shall ~~This minimum financial assurance~~
9 ~~may be demonstrated to the department by:~~

10 (1) ~~By obtaining~~ Obtaining insurance that specifically covers
11 operation and maintenance costs;

12 (2) ~~By obtaining~~ Obtaining a letter of credit;

13 (3) ~~By obtaining~~ Obtaining a surety bond;

14 (4) ~~By obtaining~~ Obtaining a trust fund or an escrow account; or

15 (5) ~~Through the use of~~ Using a combination of insurance, letter
16 of credit, surety bond, trust fund, or escrow account.

17 (c)~~(1)~~ The department ~~shall have the discretion to set the minimum~~
18 ~~amount of financial assurance required for each permit.~~ may require an amount
19 of financial assurance that exceeds the cost estimate submitted by the
20 applicant.

21 ~~(2) This minimum amount may exceed the cost estimates submitted with the~~
22 ~~permit application.~~

23 (d) ~~Any~~ A financial instrument required by this section shall be
24 posted to the benefit of the department and shall remain in effect for the
25 life of the permit.

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

28 (f) This section ~~in no way restricts~~ does not restrict local and
29 county government entities from enacting more stringent ordinances regulating
30 nonmunicipal domestic treatment sewage systems in Arkansas.

31
32 SECTION 3. Arkansas Code § 8-5-903(b), concerning procedures for
33 approval of environmental projects, contents of applications, and public
34 notice. is amended to read as follows:

35 (b) The department shall cause notice of the proposed project and
36 associated water quality standard changes described in subsection (a) of this

1 section ~~to~~ be published for public notice and comment in the same manner as
2 provided for permit applications in § 8-4-203-~~(b)~~(c), and shall ~~advise~~ notify
3 the public that the details of the proposed project are available for public
4 review.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

/s/ Greenberg

APPROVED: 3/13/2009