

As Engrossed: 2/4/91, 2/13/91, 3/27/91

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A BILL ACT 1057 OF 1991
SENATE BILL 309

4 **By: Senators Wilson, Jewell, Dowd, Russ, Gibson,**
5 **Bradford, Beebe, Malone, Pagan and Snyder**
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7

8 **For An Act To Be Entitled**

9 "AN ACT TO PROVIDE FOR INCREASED CRIMINAL AND CIVIL
10 PENALTIES FOR ENVIRONMENTAL VIOLATIONS, TO CLARIFY THE
11 CIVIL AND ADMINISTRATIVE ENFORCEMENT AUTHORITY OF THE
12 DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY; AND FOR OTHER
13 PURPOSES."
14

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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17 SECTION 1. Purpose. The General Assembly finds and determines that the
18 criminal and civil penalties imposed by current law do not accurately reflect
19 the degree of concern which the state places upon its environmental resources.
20 The current criminal penalties for hazardous waste and other violations are
21 among the lowest in the nation. Civil penalties for violations of the state
22 water, air, solid waste and hazardous waste pollution control statutes are set
23 at the minimum necessary to receive federally delegated programs. In
24 declaring itself "The Natural State," the State of Arkansas demonstrated its
25 commitment to its environmental resources. This commitment must be reflected
26 in its environmental enforcement program. This act shall be liberally
27 construed so as to achieve remedial intent.
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29 SECTION 2. Section 8-7-204 of the Arkansas Hazardous Waste Management
30 Act is hereby amended to read as follows:

31 "8-7-204. Criminal, Civil and Administrative Penalties.

32 (a) Criminal Penalties.

33 (1) Any person who violates any provision of this subchapter, who
34 commits any unlawful act under it, or who violates any rule, regulation or
35 order of the commission or department shall be guilty of a misdemeanor.
36 Notwithstanding any other provisions of Arkansas law, upon conviction that

1 person shall be subject to imprisonment for not more than one (1) year or a
2 fine of not more than twenty-five thousand dollars (\$25,000), or subject to
3 both such fine and imprisonment. For the purpose of fines only, each day or
4 part of a day during which the violation is continued or repeated shall
5 constitute a separate offense.

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

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

11 (ii) Purposely or knowingly make any false statement,
12 representation or certification in any document required to be maintained
13 under this chapter, or falsify, tamper with or render inaccurate any
14 monitoring device, method or record required to be maintained under this
15 subchapter.

16 (B) A person who violates this subdivision (2) shall be
17 guilty of a felony. Notwithstanding any other provisions of Arkansas law,
18 upon conviction that person shall be subject to imprisonment for not more than
19 five (5) years or a fine of not more than fifty thousand dollars (\$50,000), or
20 subject to both such fine and imprisonment. For the purpose of fines only,
21 each day or part of a day during which the violation is continued or repeated
22 shall constitute a separate offense.

23 (3) Any person who treats, stores, transports, or disposes of any
24 hazardous wastes and purposely, knowingly or recklessly causes the release of
25 hazardous wastes into the environment in a manner not otherwise permitted by
26 law, or creates a substantial likelihood of endangering human health, animal
27 or plant life, or property shall be guilty of a felony. Notwithstanding any
28 other provisions of Arkansas law, upon conviction that person shall be subject
29 to imprisonment for not more than ten (10) years or a fine of not more than
30 one hundred thousand dollars (\$100,000), or subject to both such fine and
31 imprisonment. For the purpose of fines only, each day or part of a day during
32 which the violation is continued or repeated shall constitute a separate
33 offense.

34 (4) Any person who treats, stores, transports, or disposes of any
35 hazardous waste and purposely, knowingly or recklessly causes the release of
36 hazardous wastes into the environment in a manner not otherwise permitted by

1 law, thereby placing another person in imminent danger of death or serious
2 bodily injury, shall be guilty of a felony. Notwithstanding any other
3 provisions of Arkansas law, upon conviction that person shall be subject to
4 imprisonment for not more than twenty (20) years or a fine of not more than
5 two hundred fifty thousand dollars (\$250,000), or subject to both such fine
6 and imprisonment. For the purpose of fines only, each day or part of a day
7 during which the violation is continued or repeated shall constitute a
8 separate offense.

9 (5) Notwithstanding the limits on fines set in subsections (1)
10 through (4) above, if a person convicted under any of the above subsections
11 has derived pecuniary gains from commission of the offenses, then he may be
12 sentenced to pay a fine not to exceed twice the amount of the pecuniary gain.

13 (b) Civil Penalties.

14 The department is authorized to institute a civil action in any court of
15 competent jurisdiction to accomplish any or all of the following:

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

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

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

26 (4) Assess civil penalties in an amount not to exceed twenty-five
27 thousand dollars (\$25,000) per day for violations of this subchapter and of
28 any rules, regulations, permits or plans issued pursuant thereto; or

29 (5) Recover civil penalties assessed pursuant to subsection (c)
30 of this section.

31 (c) Any person who violates any provision of this subchapter and
32 regulations, rules, permits or plan issued pursuant thereto may be assessed an
33 administrative civil penalty not to exceed twenty-five thousand dollars
34 (\$25,000) per violation. Each day of a continuing violation may be deemed a
35 separate violation for purposes of penalty assessment. No civil penalty may
36 be assessed until the person charged with the violation has been given the

1 opportunity for a hearing in accordance with regulations adopted by the
2 commission. All hearings and appeals arising under this subchapter shall be
3 conducted in accordance with the procedures prescribed by A.C.A. 8-4-205, 8-4-
4 212, and 8-4-218 -- 8-4-229. The procedures of this subsection may also be
5 used to recover all costs, expenses and damages to the department and any
6 other agency or subdivision of the state in enforcing or effectuating the
7 provisions of this subchapter, including but not limited to natural resource
8 damages.

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

14 (e)(1) All monies collected as reimbursement for expenses, costs and
15 damages to the department shall be deposited in the operating fund of the
16 department.

17 (2) All monies collected as civil penalties pursuant to this
18 section shall be deposited in the Emergency Response Fund as provided by
19 A.C.A. §8-7-410. The director, in his discretion, may accept in-kind services
20 in partial mitigation of cash penalties for projects or programs designed to
21 advance environmental interests, provided however that such services shall not
22 duplicate or augment services already provided by the department through
23 appropriations of the General Assembly.

24 (3) All monies collected to cover the costs, expenses or damages
25 of other agencies or subdivisions of the state, including natural resource
26 damages, shall be distributed to the appropriate governmental entity.

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28 SECTION 3. A.C.A. §8-4-103 of the Arkansas Water and Air Pollution
29 Control Act is hereby amended to read as follows:

30 "8-4-103. Criminal, Civil and Administrative Penalties.

31 (a) Criminal Penalties.

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

35 Notwithstanding any other provisions of Arkansas law, upon conviction that
36 person shall be subject to imprisonment for not more than one (1) year or a

1 fine of not more than twenty-five thousand dollars (\$25,000), or subject to
2 both such fine and imprisonment. For the purpose of fines only, each day or
3 part of a day during which the violation is continued or repeated shall
4 constitute a separate offense.

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

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

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

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

19 (B) A person who violates this subdivision (2) shall be
20 guilty of a felony. Notwithstanding any other provisions of Arkansas law,
21 upon conviction that person shall be subject to imprisonment for not more than
22 five (5) years or a fine of not more than fifty thousand dollars (\$50,000), or
23 subject to both such fine and imprisonment. For the purpose of fines only,
24 each day or part of a day during which the violation is continued or repeated
25 shall constitute a separate offense.

26 (3) Any person who purposely, knowingly or recklessly causes pollution
27 of the waters or air of the state in a manner not otherwise permitted by law,
28 and thereby places another person in imminent danger of death or serious
29 bodily injury, shall be guilty of a felony. Notwithstanding any other
30 provisions of Arkansas law, upon conviction that person shall be subject to
31 imprisonment for not more than twenty (20) years or a fine of not more than
32 two hundred and fifty thousand dollars (\$250,000), or subject to both such
33 fine and imprisonment. For the purpose of fines only, each day or part of a
34 day during which the violation is continued or repeated shall constitute a
35 separate offense.

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

6 (b) Civil Penalties.

7 The department is authorized to institute a civil action in any court of
8 competent jurisdiction to accomplish any or all of the following:

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

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

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

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

22 (5) Recover civil penalties assessed pursuant to subsection (c)
23 of this section.

24 (c) Any person who violates any provision of this subchapter and
25 regulations, rules, permits or plan issued pursuant thereto may be assessed an
26 administrative civil penalty not to exceed ten thousand dollars (\$10,000) per
27 violation. Each day of a continuing violation may be deemed a separate
28 violation for purposes of penalty assessment. No civil penalty may be
29 assessed until the person charged with the violation has been given the
30 opportunity for a hearing in accordance with regulations adopted by the
31 commission. All hearings and appeals arising under this subchapter shall be
32 conducted in accordance with the procedures prescribed by A.C.A. 8-4-205, 8-4-
33 212, and 8-4-218 -- 8-4-229. These administrative procedures may also be used
34 to recover all costs, expenses and damages to the department and any other
35 agency or subdivision of the state in enforcing or effectuating the provisions

1 of this subchapter, including but not limited to natural resource damages.

2 (d) As an alternative to the limits on civil penalties set in
3 subsections (b) and (c) above, if a person found liable in actions brought
4 under any of the above subsections has derived pecuniary gain from commission
5 of the offenses, then he may be ordered to pay a civil penalty equal to the
6 amount of the pecuniary gain.

7 (e) (1) All monies collected as reimbursement for expenses, costs and
8 damages to the department shall be deposited in the operating fund of the
9 department.

10 (2) All monies collected as civil penalties shall be deposited in
11 the Emergency Response Fund as provided by A.C.A. §8-7-410. The director, in
12 his discretion, may accept in-kind services in partial mitigation of cash
13 penalties for projects or programs designed to advance environmental
14 interests, provided however that such services shall not duplicate or augment
15 services already provided by the department through appropriations of the
16 General Assembly.

17 (3) All monies collected which represent the costs, expenses or
18 damages of another agency or subdivision of the state shall be distributed to
19 the appropriate governmental entity.

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21 SECTION 4. A.C.A. 8-6-204 of the Arkansas Solid Waste Management Code
22 is hereby amended to read as follows:

23 "8-6-204. Criminal, Civil and Administrative Penalties.

24 (a) Criminal Penalties.

25 (1) Any person who violates any provision of this subchapter, who
26 commits any unlawful act under it, or who violates any rule, regulation or
27 order of the commission or department shall be guilty of a misdemeanor.
28 Notwithstanding any other provisions of Arkansas law, upon conviction that
29 person shall be subject to imprisonment for not more than one (1) year or a
30 fine of not more than twenty-five thousand dollars (\$25,000), or subject to
31 both such fine and imprisonment. For the purpose of fines only, each day or
32 part of a day during which the violation is continued or repeated shall
33 constitute a separate offense.

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

35 (i) Violate any provision of this subchapter, commit any

1 unlawful act under it, or violate any rule, regulation or order of the
2 commission or department, and leave the state or remove his person from the
3 jurisdiction of this state;

4 (ii) Through the course of activities prohibited by this
5 section, commit a violation of §8-4-103(a)(2)(A)(i); or

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

11 (B) A person who violates this subdivision (2) shall be
12 guilty of a felony. Notwithstanding any other provisions of Arkansas law,
13 upon conviction that person shall be subject to imprisonment for not more than
14 five (5) years or a fine of not more than fifty thousand dollars (\$50,000), or
15 subject to both such fine and imprisonment. For the purpose of fines only,
16 each day or part of a day during which the violation is continued or repeated
17 shall constitute a separate offense.

18 (3) Notwithstanding the limits on fines set in subsections (1)
19 and (2) above, if a person convicted under any of the above subsections has
20 derived or will derive pecuniary gain from commission of the offenses, then he
21 may be sentenced to pay a fine not to exceed twice the amount of the pecuniary
22 gain.

23 (b) Civil Penalties.

24 The department is authorized to institute a civil action in any court of
25 competent jurisdiction to accomplish any or all of the following:

26 (1) Restrain any violation of, or compel compliance with, the
27 provisions of this subchapter and of any rules, regulations, orders, permits,
28 licenses or plans issued pursuant thereto;

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

32 (3) Recover all costs, expenses and damages to the department and
33 any other agency or subdivision of the state in enforcing or effectuating the
34 provisions of this subchapter, including natural resource damages;

35 (4) Assess civil penalties in an amount not to exceed ten

1 thousand dollars (\$10,000) per day for violations of this subchapter and of
2 any rules, regulations, permits or plans issued pursuant thereto; or

3 (5) Recover civil penalties assessed pursuant to subsection (c)
4 of this section.

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

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

23 (e)(1) All monies collected as reimbursement for expenses, costs and
24 damages to the department shall be deposited in the operating fund of the
25 department.

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

33 (3) All monies collected which represent the costs, expenses or
34 damages of another agency or subdivision of the state shall be distributed to
35 the appropriate governmental entity.

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SECTION 5. Applicability of the Arkansas Criminal Code.

The following provisions of the Arkansas Criminal Code apply to the criminal penalties imposed by Sections 2, 3, and 4 of this act.

(a) The culpable mental states referenced throughout this act shall have the definitions set out in A.C.A. §5-2-202.

(b) Solicitation or conspiracy, as defined by Subchapters 3 and 4 of Chapter 3 of the Arkansas Criminal Code, to commit any criminal act proscribed by Sections 2, 3 or 4 of this act shall be punishable as follows:

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

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

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

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

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

(d) A business organization, its agents or officers may be found liable under this act in accordance with the standards set forth in A.C.A. §5-2-501

1 et seq., and sentenced to pay fines in accordance with the provisions of
2 A.C.A. §5-4-201(d) and (e).

3

4 SECTION 6. All provisions of this Act of a general and permanent nature
5 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
6 Revision Commission shall incorporate the same in the Code.

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8 SECTION 7. If any provision of this Act or the application thereof to
9 any person or circumstance is held invalid, such invalidity shall not affect
10 other provisions or applications of the Act which can be given effect without
11 the invalid provision or application, and to this end the provisions of this
12 Act are declared to be severable.

13

14 SECTION 8. The provisions of this act shall be in addition and
15 supplemental to all other laws of Arkansas now in effect and shall repeal only
16 such laws or parts of laws as may be specifically in conflict with this act.

17

18 SECTION 9. EMERGENCY. It is hereby found and determined by the 78th
19 General Assembly that the sanctions imposed by current Arkansas law for
20 environmental violations are among the least stringent in the nation. Thus,
21 current law is inadequate to deter environmental violations, and in fact
22 extends an implicit invitation to irresponsible industries. Protection of the
23 environmental integrity of this state is essential to protect the public's
24 health and economic well-being. Therefore, an emergency is hereby declared to
25 exist and this act being necessary for the immediate preservation of the
26 public peace, health and safety shall be in full force and effect from and
27 after its passage and approval.

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/s/Wilson et al

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APPROVED: 4-9-91

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