

.As Engrossed: 1/24/91, 2/7/91, 2/14/91, 2/20/91

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senators Dowd, Ross**

A Bill ACT 454 OF 1991

SENATE BILL 167

For An Act To Be Entitled

8 "AN ACT TO AMEND THE ARKANSAS CODE TO EMPOWER THE DIRECTOR
9 OF THE DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY TO DENY
10 PERMITS, LICENSES, CERTIFICATIONS OR OPERATIONAL
11 AUTHORIZATIONS TO APPLICANTS WHO HAVE A RECORD OF
12 ENVIRONMENTAL NONCOMPLIANCE; AND FOR OTHER PURPOSES."

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

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16 SECTION 1. Subchapter 1 of Chapter 1 of Title 8 of the Arkansas Code of
17 1987 is hereby amended by adding the following section:

18 "8-1-106. Denial of Applications - Disclosure Statements.

19 (a) For the purposes of this section:

20 (1) 'affiliated person' includes, but is not limited to:

21 (A) any officer, director or partner of the applicant;

22 (B) any person employed by the applicant in a supervisory
23 capacity over operations of *the facility which is the subject of the*
24 *application* which may adversely impact the environment, or with discretionary
25 authority over such operations;

26 (C) any person owning or controlling more than five percent
27 (5%) of the applicant's debt or equity; and

28 (D) any person who is not now in compliance or has a
29 history of non-compliance with the
30 environmental laws or regulations of this
31 state or any other jurisdiction and who
32 through relationship by affinity or
33 consanguinity or who through any other
34 relationship could be reasonably expected
35 to significantly influence the applicant
36 in a manner which could adversely affect

1 the environment;

2 (2) 'disclosure statement' means a written statement by the
3 applicant which contains:

4 (A) the full name, business address, and social security
5 number of the applicant, and all affiliated persons;

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

11 (C) a description of the experience and credentials of the
12 applicant, including any past or present permits, licenses, certifications, or
13 operational authorizations relating to environmental regulation;

14 (D) a listing and explanation of any civil or criminal
15 legal actions by government agencies involving environmental protection laws
16 or regulations against the applicant and affiliated persons in the ten years
17 immediately preceding the filing of the application, including administrative
18 enforcement actions resulting in the imposition of sanctions, permit or
19 license revocations or denials issued by any state or federal authority,
20 actions that have resulted in a finding or a settlement of a violation, and
21 actions that are pending;

22 (E) a listing of any federal environment agency and any
23 other environmental agency outside this state that has or has had regulatory
24 responsibility over the applicant; and

25 (F) any other information the Director may require that
26 relates to the competency, reliability, or responsibility of the applicant and
27 affiliate persons.

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

32 (b)(1) *Except as provided in subsection (2) of this subsection (b), all*
33 *applicants for the issuance, or transfer of any permit, license, certification*
34 *or operational authority issued by the Department of Pollution Control and*
35 *Ecology shall file a disclosure statement with their applications. Deliberate*
36 *falsification or omission of relevant information from disclosure statements*

1 shall be grounds for civil or criminal enforcement action or administrative
2 denial of a permit, license, certification or operational authorization.

3 (2) *If the applicant is a publicly-held company required to file*
4 *periodic reports under the Securities and Exchange Act of 1934, or a wholly-*
5 *owned subsidiary of a publicly-held company, the applicant shall not be*
6 *required to submit a disclosure statement, but shall submit the most recent*
7 *annual and quarterly reports required by the Securities and Exchange*
8 *Commission, which provide information regarding legal proceedings in which the*
9 *applicant has been involved. The applicant shall submit such other*
10 *information as the Director may require that relates to the competency,*
11 *reliability, or responsibility of the applicant and affiliated persons.*

12 (c) The Director may deny the issuance, or transfer of any permit,
13 license, certification or operational authority if he finds, based upon the
14 disclosure statement and other investigation which he deems appropriate, that
15 (1) the applicant has a history of noncompliance with the environmental laws
16 or regulations of this state or any other jurisdiction, (2) *an applicant which*
17 *owns or operates other facilities in the state is not in substantial*
18 *compliance with, or on a legally enforceable schedule that will result in*
19 *compliance with, the environmental laws or regulations of this state, or (3) a*
20 *person with a history of noncompliance with the environmental laws or*
21 *regulations of this state or any other jurisdiction is affiliated with the*
22 *applicant to the extent of being capable of significantly influencing the*
23 *practices or operations of the applicant which could have impact upon the*
24 *environment.*

25 (d) In reaching any decision pursuant to the requirements of this
26 section, the Director shall consider:

27 (1) the potential danger to the environment and public health and
28 safety if the applicant's proposed activity is not conducted in a competent
29 and responsible manner;

30 (2) the degree to which past and present activities in this state
31 and other jurisdictions directly bear upon the reliability, competence and
32 responsibility of the applicant; and

33 (3) any evidence of rehabilitation following past violations or
34 convictions.

35 (e) Any person or legal entity aggrieved by a decision of the Director

1 under this section may appeal to the Commission on Pollution Control and
2 Ecology through administrative procedures adopted by the Commission.

3 (f) The Director shall adopt regulations necessary to implement this
4 section."

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6 SECTION 2. The provisions of this act expressly supersede those set out
7 in Act 531 of 1989. This act does not supersede or affect in any way the
8 Arkansas Surface Coal and Mining Act and implementing regulations as it
9 impacts on the import of past or pending violations upon surface coal mining
10 operators.

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12 SECTION 3. All provisions of this act of a general and permanent nature
13 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
14 Revision Commission shall incorporate the same in the Code.

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16 SECTION 4. If any provision of this act or the application thereof to
17 any person or circumstance is held invalid, such invalidity shall not affect
18 other provisions or applications of the act which can be given effect without
19 the invalid provision or application, and to this end the provisions of this
20 act are declared to be severable.

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22 SECTION 5. All laws or parts of laws in conflict with this act are
23 hereby repealed.

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25 SECTION 6. EMERGENCY. It is hereby found and determined by the General
26 Assembly that the Director of the Department of Pollution Control and Ecology
27 is in need of additional authority to deny applications for the issuance, or
28 transfer of permits if he determines that an applicant, or person with
29 substantial influence over the applicant, has a history of non-compliance with
30 environmental laws or regulations; this act provides such authority and should
31 be given immediate effect in order to grant additional environmental
32 protection as soon as possible. Therefore, an emergency is hereby declared to
33 exist, and this act being immediately necessary for the protection of the
34 public peace, health, and safety shall be in full force and effect from and
35 after its passage and approval.

Approved: 1/01/01 2/11/01 3/08/01

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/s/Dowd et al

APPROVED: 3-11-91