

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senators Yates and Fitch**

A Bill

ACT 165 OF 1993
SENATE BILL 22

For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF CHAPTERS 1, 2 AND 4
9 OF TITLE 8 OF THE ARKANSAS CODE OF 1987, RELATING TO WATER
10 AND AIR POLLUTION AND THE AUTHORITY AND RESPONSIBILITY OF
11 THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION WITH
12 RESPECT THERETO; AND FOR OTHER PURPOSES."

Subtitle

14 **"TO AMEND VARIOUS LAWS RELATING TO WATER AND AIR**
15 **POLLUTION."**

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

19
20 ***SECTION 1. Arkansas Code 8-1-101 is amended to read as follows:***

21 ***"8-1-101. Purpose.***

22 ***(a) It is the purpose of this chapter to authorize the Arkansas Pollution Control and***
23 ***Ecology Commission to establish a system of fees for the issuance of permits required by §§***
24 ***8-4-101 - 8-4-106, 8-4-201 - 8-4-229, 8-4-301 - 8-4-313, and 8-6-201 - 8-6-217 and to***
25 ***authorize the Department of Pollution Control and Ecology to collect and enforce these fees.***

26 ***(b) The express purpose of these fees shall be to defray the administrative costs of***
27 ***issuance, renewal, inspection, modification, and monitoring associated with these permits."***

28
29 ***SECTION 2. Arkansas Code 8-1-102(4) is amended to read as follows:***

30 ***"(4) 'Initial fee' means that fee required by this chapter to be submitted with all***
31 ***applications for water, air, and solid waste permits required by §§ 8-4-101 - 8-4-106, 8-4-201***
32 ***- 8-4-229, 8-4-301 - 8-4-313, or §§ 8-6-201 - 8-6-217;"***

33
34 ***SECTION 3. Arkansas Code 8-1-103(1) is amended to read as follows:***

35 ***"(1) Following a public hearing and based upon a record calculating the reasonable***
36 ***administrative costs of evaluating and taking action on permit applications and of***

1 *implementing and enforcing the terms and conditions of permits and variances, the*
2 *commission shall establish, by regulation, reasonable fees for initial issuance, annual review,*
3 *and modification of water, air, or solid waste permits required by §§ 8-4-101 - 8-4-106,*
4 *8-4-201 - 8-4-229, 8-4-301 - 8-4-313, and 8-6-201 - 8-6-217. These fees shall consist of initial*
5 *fees, annual review fees, and modification fees, as defined in § 8-1-102."*

6

7 ***SECTION 4. Arkansas Code 8-1-106 is amended to read as follows:***

8 ***"8-1-106. Definitions - Disclosure statements - Denial of application - Appeal -***
9 ***Regulations.***

10 ***(a) For the purposes of this section:***

11 ***(1) 'Affiliated person' includes, but is not limited to:***

12 ***(A) Any officer, director, or partner of the applicant;***

13 ***(B) Any person employed by the applicant in a supervisory capacity over operations***
14 ***of the facility which is the subject of the application which may adversely impact the***
15 ***environment, or with discretionary authority over such operations;***

16 ***(C) Any person owning or controlling more than five percent (5%) of the applicant's***
17 ***debt or equity; and***

18 ***(D) Any person who is not now in compliance or has a history of noncompliance with***
19 ***the environmental laws or regulations of this state or any other jurisdiction and who through***
20 ***relationship by affinity or consanguinity or who through any other relationship could be***
21 ***reasonably expected to significantly influence the applicant in a manner which could***
22 ***adversely affect the environment;***

23 ***(2) 'Disclosure statement' means a written statement by the applicant which contains:***

24 ***(A) The full name, business address, and social security number of the applicant, and***
25 ***all affiliated persons;***

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

30 ***(C) A description of the experience and credentials of the applicant, including any***
31 ***past or present permits, licenses, certifications, or operational authorizations relating to***
32 ***environmental regulation;***

33 ***(D) A listing and explanation of any civil or criminal legal actions by government***
34 ***agencies involving environmental protection laws or regulations against the applicant and***
35 ***affiliated persons in the ten (10) years immediately preceding the filing of the application,***

1 *including administrative enforcement actions resulting in the imposition of sanctions, permit*
2 *or license revocations or denials issued by any state or federal authority, actions that have*
3 *resulted in a finding or a settlement of a violation, and actions that are pending;*

4 *(E) A listing of any federal environmental agency and any other environmental*
5 *agency outside this state that has or has had regulatory responsibility over the applicant; and*

6 *(F) Any other information the director may require that relates to the competency,*
7 *reliability, or responsibility of the applicant and affiliate persons;*

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

12 *(b)(1) Except as provided in subdivision (2) of this subsection, all applicants for the*
13 *issuance or transfer of any permit, license, certification, or operational authority issued by*
14 *the Department of Pollution Control and Ecology shall file a disclosure statement with their*
15 *applications. Deliberate falsification or omission of relevant information from disclosure*
16 *statements shall be grounds for civil or criminal enforcement action or administrative denial*
17 *of a permit, license, certification, or operational authorization.*

18 *(2) If the applicant is a publicly held company required to file periodic reports under*
19 *the Securities and Exchange Act of 1934, or a wholly owned subsidiary of a publicly held*
20 *company, the applicant shall not be required to submit a disclosure statement, but shall submit*
21 *the most recent annual and quarterly reports required by the Securities and Exchange*
22 *Commission, which provide information regarding legal proceedings in which the applicant*
23 *has been involved. The applicant shall submit such other information as the director may*
24 *require that relates to the competency, reliability, or responsibility of the applicant and*
25 *affiliated persons.*

26 *(c) The director may deny the issuance or transfer of any permit, license, certification,*
27 *or operational authority if he finds, based upon the disclosure statement and other*
28 *investigation which he deems appropriate, that: (1) The applicant has a history of*
29 *noncompliance with the environmental laws or regulations of this state or any other*
30 *jurisdiction;*

31 *(2) An applicant which owns or operates other facilities in the state is not in*
32 *substantial compliance with, or on a legally enforceable schedule that will result in*
33 *compliance with, the environmental laws or regulations of this state; or*

34 *(3) A person with a history of noncompliance with the environmental laws or*
35 *regulations of this state or any other jurisdiction is affiliated with the applicant to the extent of*

1 *being capable of significantly influencing the practices or operations of the applicant which*
2 *could have impact upon the environment.*

3 *(d) In reaching any decision pursuant to the requirements of this section, the director*
4 *shall consider:*

5 *(1) The potential danger to the environment and public health and safety if the*
6 *applicant's proposed activity is not conducted in a competent and responsible manner;*

7 *(2) The degree to which past and present activities in this state and other jurisdictions*
8 *directly bear upon the reliability, competence, and responsibility of the applicant; and*

9 *(3) Any evidence of rehabilitation following past violations or convictions.*

10 *(e) An applicant for a transfer of a permit shall notify the director at least thirty (30)*
11 *days in advance of the proposed transfer date of the proposed transfer and submit a*
12 *'disclosure statement' as required in this section. The permit is automatically transferred to*
13 *the new permittee unless the director denies the request to transfer within thirty (30) days of*
14 *the receipt of the disclosure statement. Only those reasons set out in subsection (c) of this*
15 *section and the deliberate falsification or omission of the relevant information from the*
16 *disclosure statement as set out in subsection (b)(1) of this section shall constitute grounds for*
17 *the denial of a transfer.*

18 *(f) Any person or legal entity aggrieved by a decision of the director under this section*
19 *may appeal to the Commission on Pollution Control and Ecology through administrative*
20 *procedures adopted by the commission.*

21 *(g) The commission shall adopt regulations necessary to implement this section."*

22

23 **SECTION 5. Arkansas Code 8-1-201 is amended to read as follows:**

24 **"8-1-201. Legislative intent.**

25 **The General Assembly recognizes that since 1949, when the precursor of the Pollution**
26 **Control and Ecology Commission was first created, significant changes have occurred in the**
27 **responsibilities charged to the state's environmental agency. This subchapter intends to**
28 **clarify and supersede prior law which does not comport with this delineation of responsibility**
29 **between the Department of Pollution Control and Ecology and the Pollution Control and**
30 **Ecology Commission.**

31 **Further, in delineating the responsibility between the Department of Pollution Control**
32 **and Ecology and the Pollution Control and Ecology Commission, it is the intent of the General**
33 **Assembly neither to expand nor to diminish any rights of property owners of this state under**
34 **Article 2, §22 of the Constitution of the State of Arkansas."**

35

1 **SECTION 6. Arkansas Code 8-1-202 is amended to read as follows:**

2 **"8-1-202. Powers of the Director of the Department of Pollution Control and Ecology.**

3 **(a) The executive head of the Department of Pollution Control and Ecology shall be**
4 **the Director of the Department of Pollution Control and Ecology, who shall be appointed by**
5 **the Governor, with the consent of the Senate. The director shall serve at the pleasure of the**
6 **Governor.**

7 **(b) The director shall be the executive officer and active administrator of all pollution**
8 **control activities in the state. As such, the director's duties shall include:**

9 **(1)(A) The administration of permitting, licensing, certification, and grants**
10 **programs deemed necessary to protect the environmental integrity of the state.**

11 **(B) The director, or his delegatee within his staff, shall serve as the issuing authority**
12 **for the state;**

13 **(2)(A) Initiation and settlement of civil or administrative enforcement actions to**
14 **compel compliance with laws, orders, and regulations charged to the responsibility of the**
15 **Department of Pollution Control and Ecology.**

16 **(B) In this regard, the director may propose the assessment of civil penalties as**
17 **provided by law, and take all actions necessary to collect such penalties;**

18 **(3) Issuance of orders in such circumstances which reasonably require emergency**
19 **measures be taken to protect the environment or the public health and safety except to the**
20 **extent that the matter involved is reserved to the jurisdiction or orders of the Commission for**
21 **rulemaking procedures in 8-4-202;**

22 **(4) Day-to-day administration of all activities which the Department of Pollution**
23 **Control and Ecology is empowered by law to perform, including, but not limited to, the**
24 **employment and supervision of such technical, legal, and administrative staff, within**
25 **approved appropriations, necessary to carry out the responsibilities vested with the**
26 **department;**

27 **(5) Providing technical and legal expertise and assistance in the field of**
28 **environmental protection to other agencies and subdivisions of the state as appropriate;**

29 **(6) Day-to-day administration of environmental programs delegated to the State of**
30 **Arkansas by the responsible agencies of the federal government; and**

31 **(7) Any other power or duty specifically vested with the director or department by the**
32 **General Assembly."**

33

34 **SECTION 7. Arkansas Code 8-1-203 is amended to read as follows:**

35 **"8-1-203. Powers and responsibilities of the Pollution Control and Ecology**

1 **Commission.**

2 **(a) The commission shall meet regularly in publicly noticed open meetings to discuss**
3 **and rule upon matters of environmental concern.**

4 **(b) The commission's powers and duties shall be as follows:**

5 **(1) Promulgation of rules and regulations implementing the substantive statutes**
6 **charged to the department for administration;**

7 **(2) Promulgation of rules, regulations and procedures not otherwise governed by**
8 **applicable law which the commission deems necessary to secure public participation in**
9 **environmental decision making processes.**

10 **(3) Promulgation of rules and regulations governing administrative procedures for**
11 **challenging or contesting department actions;**

12 **(4) In the case of permitting or grants decisions, providing the right to appeal a**
13 **permitting or grants decision rendered by the director or his delegatee;**

14 **(5) In the case of an administrative enforcement or emergency action, providing the**
15 **right to contest any such action initiated by the director;**

16 **(6) Instruct the director to prepare such reports or perform such studies as will**
17 **advance the cause of environmental protection in the state;**

18 **(7) Make recommendations to the director regarding overall policy and**
19 **administration of the department, provided, however, that the director shall always remain**
20 **within the plenary authority of the Governor; and**

21 **(8) Upon a majority vote, initiate review of any director's decision.**

22 **(c)(1) In providing for adjudicatory review as contemplated by subdivisions (b)(4)**
23 **and (5) of this section, the commission may appoint one (1) or more administrative hearing**
24 **officers. The administrative hearing officers shall at all times serve as an agent of the**
25 **commission.**

26 **(2) In hearings upon appeals of permitting or grants decisions by the director or**
27 **contested administrative enforcement or emergency actions initiated by the director, the**
28 **administrative hearing officers shall administer the hearing in accordance with procedures**
29 **adopted by the commission, and after due deliberation, submit his recommended decision to**
30 **the commission.**

31 **(3)(A)(i) Commission review of any appealed or contested matter shall be upon the**
32 **record compiled by the administrative hearing officer and his recommended decision.**

33 **(ii) Commission review shall be de novo, provided, however, that no additional**
34 **evidence need be received unless the commission so decides in accordance with established**
35 **administrative procedures.**

1 ***(B) The commission may afford the opportunity for oral arguments to all parties of***
2 ***the adjudicatory hearing.***

3 ***(C) (i) By the majority vote of a quorum, the commission may affirm, reverse and***
4 ***dismiss, or reverse and remand to the director.***

5 ***(ii) If the commission votes to affirm or reverse, such decision shall constitute***
6 ***final agency action for purposes of appeal.***

7 ***(A) Any party aggrieved by the commission decision may appeal as provided by***
8 ***applicable law."***

9
10 ***SECTION 8. Arkansas Code 8-2-205 is amended to read as follows:***

11 ***"8-2-205. Procedure for issuance of rules or regulations, appeals, hearings, etc.***

12 ***(a) The procedure of the Arkansas Pollution Control and Ecology Commission for***
13 ***issuance of any rules and regulations, conduct of hearings, notice, review of actions on***
14 ***certificates, right of appeal, presumptions, finality of actions, and related matters shall be as***
15 ***provided in Part I of the Arkansas Water and Air Pollution Control Act as amended, §§***
16 ***8-4-101 - 8-4-106, 8-4-201 - 8-4-229, including without limitation §§ 8-4-202, 8-4-210,***
17 ***8-4-212 - 8-4-214, 8-4-218 - 8-4-229.***

18 ***(b) Any permittee or person subject to regulation may petition the commission for a***
19 ***declaratory order as to the applicability of any rule, statute, permit or order enforced by the***
20 ***department or the commission. Such petitions shall be processed in the same manner as***
21 ***appeals under the procedures prescribed by §§8-4-205, 8-4-212, and 8-4-218 - 8-4-229.***
22 ***These declaratory orders shall have the same status as an order of the commission."***

23
24 ***SECTION 9. Arkansas Code 8-4-102(3) and (4) are amended to read as follow:***

25 ***"(3) 'Other wastes' means garbage, municipal refuse, decayed wood, sawdust,***
26 ***shavings, bark, lime, sand, ashes, offal, oil, tar chemicals, and all other organic or inorganic***
27 ***substances, not including sewage or industrial waste which may be discharged into the waters***
28 ***of the state. 'Any wastes' and 'pollutants' includes sewage, industrial wastes, or other wastes;***

29 ***(4) 'Pollution' means such contamination or other alteration of the physical, chemical, or***
30 ***biological properties of any waters of the state, or such discharge of any liquid, gaseous, or***
31 ***solid substance in any waters of the state as will, or is likely to, render the waters harmful,***
32 ***detrimental, or injurious to public health, safety, or welfare; to domestic, commercial,***
33 ***industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild***
34 ***animals, birds, fish, or other aquatic life;"***

35

1 **SECTION 10. Arkansas Code 8-4-103 is amended to read as follows:**

2 **"8-4-103. Criminal, civil, and administrative penalties.**

3 **(a) CRIMINAL PENALTIES.**

4 **(1)(A) Any person who violates any provision of this subchapter, who commits any**
5 **unlawful act under it, or who violates any rule, regulation, or order of the commission or**
6 **department, shall be guilty of a misdemeanor.**

7 **(B) Notwithstanding any other provisions of Arkansas law, upon conviction that**
8 **person shall be subject to imprisonment for not more than one (1) year or a fine of not more**
9 **than twenty-five thousand dollars (\$25,000), or subject to both such fine and imprisonment.**
10 **For the purpose of fines only, each day or part of a day during which the violation is**
11 **continued or repeated shall constitute a separate offense.**

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

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

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

19 **(iii) Purposely or knowingly make any false statement, representation, or**
20 **certification in any document required to be maintained under this chapter, or falsify, tamper**
21 **with, or render inaccurate any monitoring device, method or record required to be**
22 **maintained under this chapter.**

23 **(B) (i) A person who violates this subdivision (2) shall be guilty of a felony.**

24 **(ii) Notwithstanding any other provisions of Arkansas law, upon conviction**
25 **that person shall be subject to imprisonment for not more than five (5) years or a fine of not**
26 **more than fifty thousand dollars (\$50,000), or subject to both such fine and imprisonment.**
27 **For the purpose of fines only, each day or part of a day during which the violation is**
28 **continued or repeated shall constitute a separate offense.**

29 **(3)(A) Any person who purposely, knowingly, or recklessly causes pollution of the**
30 **waters or air of the state in a manner not otherwise permitted by law, and thereby places**
31 **another person in imminent danger of death or serious bodily injury, shall be guilty of a**
32 **felony.**

33 **(B) Notwithstanding any other provisions of Arkansas law, upon conviction that**
34 **person shall be subject to imprisonment for not more than twenty (20) years or a fine of not**
35 **more than two hundred fifty thousand dollars (\$250,000), or subject to both such fine and**

1 *imprisonment. For the purpose of fines only, each day or part of a day during which the*
2 *violation is continued or repeated shall constitute a separate offense.*

3 *(4) Notwithstanding the limits on fines set in subdivisions (1)-(3) above, if a person*
4 *convicted under any of the above subdivisions has derived or will derive pecuniary gains from*
5 *commission of the offenses, then he may be sentenced to pay a fine not to exceed twice the*
6 *amount of the pecuniary gain. (b) CIVIL PENALTIES. The department is*
7 *authorized to institute a civil action in any court of competent jurisdiction to accomplish any*
8 *or all of the following:*

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

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

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

16 *(4) Assess civil penalties in an amount not to exceed ten thousand dollars*
17 *(\$10,000) per day for violations of this subchapter and of any rules, regulations, permits, or*
18 *plans issued pursuant thereto; or*

19 *(5) Recover civil penalties assessed pursuant to subsection (c) of this section.*

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

31 *(d)(1) Before assessing a civil penalty under subsection (c) above, the director shall*
32 *provide public notice of and a reasonable opportunity to comment on the proposed issuance of*
33 *such order. If the civil penalty is being assessed under an order on consent, the order shall not*
34 *be effective until thirty (30) days after the publication of notice of such order. Notice shall*
35 *also be given to each member of the commission.*

1 ***(2) Notice of any administrative enforcement order shall contain the following:***

2 ***(A) the identity of the person or facility alleged to be in violation;***

3 ***(B) the location by city or county of the alleged violation;***

4 ***(C) a brief description by environmental media (i.e. water, air, solid waste,***
5 ***hazardous waste) impacted by the alleged violation;***

6 ***(D) the type of administrative action proposed (i.e. consent order, notice of***
7 ***violation, emergency order);***

8 ***(E) the amount of penalty to be assessed.***

9 ***(3) Any person who comments on a proposed assessment of a penalty under this***
10 ***subsection shall be given notice of any hearing held under this subsection. In any hearing***
11 ***held under this subsection, such person shall have a right to intervene upon timely application.***

12 ***(4) If no hearing is held on the proposed order, any person who commented on the***
13 ***proposed order may petition, within thirty (30) days of the effective date of the order, the***
14 ***commission to set aside such order and to provide a hearing. If the evidence presented by the***
15 ***petitioner is material and was not considered in the issuance of the order, and the commission***
16 ***finds in light of the new evidence that the order is not reasonable and appropriate, it may set***
17 ***aside such order and provide a hearing. If the commission denies a hearing under this***
18 ***subdivision, it shall provide to the petitioner notice of and its reasons for such denial. The***
19 ***denial of such a hearing may be appealed pursuant to §8-4-222.***

20 ***(5) The commission, on its own initiative, may institute review of any enforcement***
21 ***action taken by the director within thirty (30) days of the effective date of such order.***

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

26 ***(f)(1) All moneys collected as reimbursement for expenses, costs, and damages to the***
27 ***department shall be deposited in the operating fund of the department.***

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

34 ***(3) All moneys collected which represent the costs, expenses, or damages of***
35 ***another agency or subdivision of the state shall be distributed to the appropriate***

1 *governmental entity.*

2 *(g)(1) Any governmental entity permitted to operate a Publicly Owned Treatment*
3 *Works (POTW) shall have the authority, pursuant to duly promulgated ordinances or*
4 *regulations, to collect in a court of competent jurisdiction civil or criminal penalties in an*
5 *amount not to exceed one thousand dollars (\$1,000), for each violation by industrial users of*
6 *pretreatment standards or requirements.*

7 *(2) Such criminal or civil action may be initiated only after a majority vote of*
8 *the entity's governing body resolves to pursue such action.*

9 *(3) For the purpose of this subsection, each day of a continuing violation may*
10 *be deemed a separate violation.*

11 *(h) The culpable mental states referenced throughout this section shall have the*
12 *definitions set out in § 5-2-202.*

13 *(i) Solicitation or conspiracy, as defined by subchapters 3 and 4 of chapter 3 of the*
14 *Arkansas Criminal Code, to commit any criminal act proscribed by this section and §§*
15 *8-6-204 and 8-7-204 shall be punishable as follows:*

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

20 *(2) Any solicitation or conspiracy to commit an offense under this section*
21 *which is a felony subject to fines of fifty thousand dollars (\$50,000) per day or imprisonment*
22 *up to five (5) years shall be a felony subject to fines up to thirty-five thousand dollars*
23 *(\$35,000) per day or imprisonment up to two (2) years, or both such fine and imprisonment.*

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

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

34 *(j) In cases considering suspension of sentence or probation, efforts or commitments by*
35 *the defendant to remediate any adverse environmental effects caused by his activities may be*

1 *considered by the court to be restitution as contemplated by § 5-4-301.*

2 *(k) A business organization, its agents or officers, may be found liable under this*
3 *section in accordance with the standards set forth in § 5-2-501 et seq., and sentenced to pay*
4 *finer in accordance with the provisions of § 5-4-201(d) and (e)."*

5

6 **SECTION II.** *Arkansas Code 8-4-201 is amended to read as follows:*

7 **"8-4-201. Powers and duties of commission generally.**

8 *The Arkansas Pollution Control and Ecology Commission is given and charged with*
9 *the following powers and duties:*

10 **(1) Enforcement of Laws.** *To administer and enforce all laws and regulations*
11 *relating to the pollution of any waters of the state;*

12 **(2) Investigations and Surveys.**

13 **(A)** *To investigate the extent, character, and effect of the pollution of the waters of this*
14 *state;*

15 **(B)** *To conduct investigations, research, surveys, and studies and gather data and*
16 *information necessary or desirable in the administration or enforcement of pollution laws;*
17 *and*

18 **(C)** *To make such classification of the waters of this state as it may deem advisable;*

19 **(3) Standards.** *To establish and alter such reasonable pollution standards for any*
20 *waters of this state in relation to the use to which they are or may be put as it shall deem*
21 *necessary for the purpose of this chapter; (4) Program.* *To prepare a comprehensive*
22 *program for the elimination or reduction of the pollution of the waters of this state;*

23 **(5) Plans of Disposal Systems.** *To require to be submitted and to approve plans and*
24 *specifications for disposal systems, or any part of them, and to inspect the construction thereof*
25 *for compliance with the approved plans thereof;*

26 **(6) Rules and Regulations.** *Consistent with A.C.A. 8-4-202 to adopt, modify or*
27 *repeal rules and regulations and to declare moratoriums or suspension of the processing of a*
28 *type or category of permits."*

29

30 **SECTION 12.** *Arkansas Code 8-4-202 is amended to read as follows:*

31 **"8-4-202. Rules and regulations.**

32 **(a)** *The Arkansas Pollution Control and Ecology Commission is given and charged*
33 *with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules*
34 *and regulations implementing or effectuating the powers and duties of the department and*
35 *the commission under this chapter.*

1 ***(b) Without limiting the generality of this authority, these rules and regulations may,***
2 ***among other things, prescribe:***

3 ***(1) Effluent standards specifying the maximum amounts or concentrations and the***
4 ***physical, thermal, chemical, biological, and radioactive nature of the contaminants that may***
5 ***be discharged into the waters of this state or into publicly owned treatment facilities;***

6 ***(2) Requirements and standards for equipment and procedures for monitoring***
7 ***contaminant discharges at their sources including publicly owned treatment facilities and***
8 ***industrial discharges into such facilities, the collection of samples, and the collection,***
9 ***reporting, and retention of data resulting from such monitoring; and***

10 ***(3) Water quality standards, performance standards, and pretreatment standards.***

11 ***(c) Any person shall have the right to petition the Arkansas Pollution Control and***
12 ***Ecology Commission for the issuance, amendment, or repeal of any rule or regulation.***
13 ***Within sixty (60) days from the date of the submission of a petition, the commission shall***
14 ***either institute rulemaking proceedings or give the petitioner written notice denying the***
15 ***petition together with a written statement setting out the reasons for denial.***

16 ***(1) In the event the petition is denied the decision of the commission will be deemed a***
17 ***final order subject to appeal as provided in subdivision (d)(5) of this section.***

18 ***(2) The record for appeal, in a petition denial, shall consist of the petition for***
19 ***rulemaking filed with the commission, the commission's written statement setting out the***
20 ***reasons for denial, and any document referenced therein.***

21 ***(d) (1) Prior to the adoption, amendment, or repeal of any rule or regulation or prior***
22 ***to suspending the processing of a type or category of permits or the declaration of a***
23 ***moratorium on a type or category of permits the commission shall give at least twenty (20)***
24 ***days notice of its intended action. The notice shall include a statement of the substance of the***
25 ***intended action, a description of the subjects and issues involved, and the time, place, and***
26 ***manner in which interested persons may make comments. The notice shall be mailed to all***
27 ***persons who have requested advance notice of rulemaking proceedings. The notice shall also***
28 ***be published at least twice in newspapers having a general statewide circulation and in the***
29 ***appropriate industry, trade, or professional publications the commission may select.***

30 ***(2) All interested parties shall be afforded a reasonable opportunity to submit written***
31 ***data, information, views, opinions, and arguments and to make oral statements concerning***
32 ***the proposed rule, regulation, suspension, or moratorium prior to a decision being rendered***
33 ***by the commission. All written material, photographs, published material, electronic media***
34 ***received by the commission shall be preserved and, along with a record of all oral comments***
35 ***made at any public hearing, shall become an element of the record of rulemaking. Any***

1 *person who considers himself injured in his person, business or property by final agency*
2 *action under this section shall be entitled to judicial review of the action under this section.*

3 **(3)** *If, in response to comments, the commission amends a proposed regulation to the*
4 *extent that the rule would have an effect not previously expressed in the notice required by*
5 *subsection (d)(1), the commission shall provide another adequate public notice. This*
6 *subsection shall not, however, require a second public notice if the final regulation is a logical*
7 *outgrowth of the regulation proposed in the prior notice.*

8 **(4)** *The commission shall compile and maintain a record of rulemaking that shall*
9 *contain:*

10 **(A)** *A copy of all notices described in subdivision (d) of this section,*
11 *and a concise general statement of the basis and purpose of the proposed rule, which shall*
12 *include a written explanation of the necessity of the regulation and a demonstration that any*
13 *technical regulation or technical standard is based on generally accepted scientific knowledge*
14 *and engineering practices. For any standard or regulation that is identical to a regulation*
15 *promulgated by the United States Environmental Protection Agency, this portion of the*
16 *record may be satisfied by reference to the Code of Federal Regulations. In all other cases the*
17 *department must provide its own justification with appropriate references to the scientific and*
18 *engineering literature or written studies conducted by the department.*

19 **(B)** *Copies of all written material, photographs, published materials, electronic*
20 *media, and the record of all oral comments received by the commission during the public*
21 *comment period and hearings.*

22 **(C)** *A responsive summary which groups public comments into similar categories and*
23 *explains why the commission accepted or rejected the rationale of each category.*

24 **(5)** *The decisions of the commission with regard to this section are final and may be*
25 *judicially appealed to the appropriate circuit court as provided in 8-4-222 within thirty (30)*
26 *days after filing with the Office of Secretary of State by persons who have standing as set out*
27 *in subdivision (d)(2) of this section. The record for review shall consist of a copy of the*
28 *regulation and the record of rulemaking described in subdivision (d)(4) of this section. Rule*
29 *changes, suspensions, or moratoriums on types of categories of permits adopted by the*
30 *commission shall be stayed and not take effect during the pendency of the appeal, except as*
31 *specified in subsection (e).*

32 **(e)** *If the commission determines that imminent peril to the public health, safety, or*
33 *welfare requires immediate change in the rules, or immediate suspension, or moratorium on*
34 *categories or types of permits, it may, after documenting the facts and reasons, declare an*
35 *emergency and implement emergency rules, regulations, suspensions, or moratoriums. No*

1 *rule, regulation, suspension, or moratorium adopted under an emergency declaration shall*
2 *be effective for longer than ninety (90) days. The imminent loss of federal funding,*
3 *certification or authorization for any program administered by the department shall*
4 *establish a prima facie case of imminent peril to the public health, safety or welfare."*
5

6 **SECTION 13.** *Arkansas Code 8-4-203 is amended to read as follows:*

7 **"8-4-203. Permits generally.**

8 **(a) The Arkansas Pollution Control and Ecology Commission is given and charged**
9 **with the power and duty to issue, continue in effect, revoke, modify, or deny permits, under**
10 **such conditions as it may prescribe, to prevent, control, or abate pollution, for the discharge of**
11 **sewage, industrial waste, or other wastes into the waters of the state, including the disposal of**
12 **pollutants into wells, and for the installation, modification, or operation of disposal systems or**
13 **any part of them.**

14 **(b)(1) When any application is filed with the department for the issuance of a new**
15 **permit, the department shall cause notice of the application to be published in a newspaper of**
16 **general circulation in the county in which the proposed facility is to be located.**

17 **(2) The notice required by this subsection shall advise that any interested party may**
18 **request a public hearing on the proposed permit by giving the department a written request**
19 **within ten (10) days of the publication of the notice.**

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

24 **(4) The provisions of this subsection shall not be required for permit transfers or**
25 **minor modifications of existing permits.**

26 **(c) Whenever the department proposes to grant or deny any permit application, it**
27 **shall cause notice of its proposed action to be published in a newspaper of general circulation**
28 **in the county in which the facility that is the subject of the application is located. The notice**
29 **shall afford any interested party thirty (30) calendar days in which to submit comments on**
30 **the proposed permit action. Not less than fifteen (15) days after the conclusion of the public**
31 **comment period, the department shall announce in writing its final decision regarding the**
32 **permit application. The department's final decision shall include a response to each issue**
33 **raised in any public comments received during the public comment period. In the case of any**
34 **discharge limit, emission limit, environmental standard, analytical method or monitoring**
35 **requirements the record of the proposed action and the response shall include a written**

1 *explanation of the rationale for the proposal, demonstrating that any technical requirements*
2 *or standards are based upon generally accepted scientific knowledge and engineering*
3 *practices. For any standard or requirement that is identical to a duly promulgated and*
4 *applicable regulation, this demonstration may be satisfied by reference to the regulation. In*
5 *all other cases the department must provide its own justification with appropriate reference to*
6 *the scientific and engineering literature or written studies conducted by the department.*

7 *(d) All costs of publications of notice under this section shall be paid by the applicant*
8 *for the permit.*

9 *(e) Only those persons who submit comments on the record during the public comment*
10 *period and the applicant shall have standing to appeal the decision of the department to the*
11 *commission."*

12

13 **SECTION 14. Arkansas Code 8-4-204 is amended to read as follows:**

14 **"8-4-204 Permits - Revocation**

15 **The Arkansas Pollution Control and Ecology Commission is given and charged with**
16 **the power and duty to revoke, modify, or suspend, in whole or in part, for cause any permit**
17 **issued under this chapter, including without limitation:**

18 **(1) Violation of any condition of the permit;**

19 **(2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant**
20 **facts; or**

21 **(3) Change in any applicable regulation or change in any preexisting condition**
22 **affecting the nature of the discharge that requires either a temporary or permanent reduction**
23 **or elimination of the permitted discharge."**

24

25 **SECTION 15. Arkansas Code 8-4-205 is amended to read as follows:**

26 **"8-4-205 Permits - Hearings upon denial, revocation, or modification and other**
27 **permit actions.**

28 **(a) Any person who is denied a permit by the Director of the Department of Pollution**
29 **Control and Ecology or who has a permit revoked or modified or a request for permit transfer**
30 **or modification denied shall be afforded an opportunity for a hearing by the commission in**
31 **connection therewith, upon written application made within thirty (30) days after service of**
32 **notice of the denial, revocation, or modification.**

33 **(b)(1) Only those interested person, other than the applicant, who have submitted**
34 **comments on the record regarding a proposed permit action during the public comment**
35 **period shall have standing to request a hearing by the commission in connection therewith,**

1 *upon written application made within thirty (30) days after the date of the department_s*
2 *final decision regarding the permit action.*

3 *(2) No interested party requesting a hearing under this subsection may raise any*
4 *issue in the hearing that was not raised in the public comments unless the party raising the*
5 *issue shows good cause why such issue could not, with reasonable diligence, have been*
6 *discovered and presented during the public comment period. The limitation in this subsection*
7 *shall not restrict the issues that may be addressed by the applicant in any appeal.*

8 *(3) A request for a hearing shall identify the permit action in question and its date*
9 *and must include a complete and detailed statement identifying the legal and factual*
10 *objections to the permit action.*

11 *(c)(1) Within thirty (30) days of the date the request for a hearing is filed with the*
12 *commission secretary, a preliminary hearing will be conducted in the name of the commission*
13 *by the commission_s authorized hearing officer. At this preliminary hearing the hearing*
14 *officer shall develop a recommended decision for the commission regarding the extent to*
15 *which, if at all, the request should be granted or denied and which parties should be allowed to*
16 *participate. In reaching this decision, the hearing officer shall determine whether the parties*
17 *qualify as proper parties under subdivision (b)(1) and whether the request conforms with the*
18 *requirements under subdivision (b)(2) and (3).*

19 *(2) The recommended decision of the hearing officer shall be transmitted to the*
20 *commission for action at its next regularly scheduled meeting. The commission shall consider*
21 *the recommended decision of the hearing officer and shall either affirm the decision in whole*
22 *or in part or reverse the decision in whole or in part.*

23 *(3) At this preliminary hearing, the hearing officer shall weigh the equities of any*
24 *request for expedited review and advance the case on the administrative docket as*
25 *circumstances permit.*

26 *(4) The commission shall review the director_s decision de novo.*

27 *(5) The hearing officer shall schedule the hearing and other proceedings such that the*
28 *appeal will be submitted to the commission for final commission action within one hundred*
29 *twenty (120) days after the preliminary hearing unless the parties mutually agree to a*
30 *longer period of time or the hearing officer establishes a longer period of time for just cause.*

31 *(6) During the pendency of the appeal to the commission:*

32 *(A) The denial of a permit shall stand,*

33 *(B) The issuance, modification, or revocation of a permit or that part of a*
34 *permit which is the subject of the appeal shall be stayed.*

35 *(C) Notwithstanding (A) and (B), upon application by any party, the*

1 *commission may provide for a stay, modify the terms of a stay, or terminate a stay under*
2 *appropriate circumstances to avoid substantial prejudice to any party.*

3 *(7) The decision of the commission is final, and only those persons who are parties to*
4 *the administrative appeal under this section shall have standing to appeal a permitting*
5 *decision to circuit court as provided for in §§8-4-222 - 8-4-229."*

6
7 **SECTION 16.** *Arkansas Code 8-4-207(6) is amended to read as follows:*

8 *"(6) (A) Any records, reports, or information obtained under this chapter and any*
9 *permits, permit applications, and related documentation shall be available to the public for*
10 *inspection and copying.*

11 *(B)(i) However, information submitted to the department may be claimed as*
12 *confidential if its disclosure would divulge trade secrets.*

13 *(ii) The department shall deny any claim for confidentiality for the name and address*
14 *of any permit applicant or permittee or for any NPDES permit applications, NPDES*
15 *permits, and effluent data.*

16 *(iii) Information required by NPDES application forms, including any information*
17 *submitted on the forms themselves and any attachments used to supply information required*
18 *by the forms, shall not be claimed confidential nor afforded this protection.*

19 *(iv) Any person adversely affected by a determination by the department on a claim*
20 *of confidentiality may appeal the determination as provided in A.C.A. § 8-4-222 and 8-4-*
21 *223."*

22
23 **SECTION 17.** *Arkansas Code 8-4-208(c) is amended to read as follows:*

24 *"(c) Any public hearing which may be held by the Director of the Department of*
25 *Pollution Control and Ecology preliminary to acting on a permit application as required by*
26 *the Federal Water Pollution Control Act Amendments of 1974 and guidelines shall, unless*
27 *otherwise designated in the notice of hearing, be for informational purposes only and shall not*
28 *be deemed a hearing before the commission within the meaning of § 8-4-205. No appeal may*
29 *be taken therefrom."*

30
31 **SECTION 18.** *Arkansas Code 8-4-213 is amended to read as follows:*

32 **"8-4-213. Conclusiveness of commission actions.**

33 *(a) If no appeal is taken from an order, rule, regulation, or other decision of the Arkansas*
34 *Pollution Control and Ecology Commission as provided in A.C.A. § 8-4-222 - 8-4-229, or if*
35 *the action of the commission is affirmed on appeal, then the action of the commission in the*

1 *matter shall be deemed conclusive, and the validity and reasonableness thereof shall not be*
2 *questioned in any other action or proceeding.*

3 *(b) However, this subsection shall not preclude the authority of the commission to*
4 *modify or rescind its actions."*

5

6 ***SECTION 19. Arkansas Code 8-4-221 is amended to read as follows:***

7 ***"8-4-221. Violations of chapter, orders, rules, etc. - Hearing - Orders.***

8 ***On the basis of the evidence produced at the hearing, the commission shall enter such***
9 ***order as in its opinion will best further the purposes of this chapter. A copy of the order shall***
10 ***be served upon the alleged violator and on such other persons as shall have appeared at the***
11 ***hearing and made written request for notice of the order, in the manner provided by §***
12 ***8-4-214. The order of the commission shall become final and binding on all parties unless***
13 ***appealed, as provided in A.C.A. § 8-4-222 - 8-4-229, within thirty (30) days after service of***
14 ***the order."***

15

16 ***SECTION 20. Arkansas Code 8-4-222 is amended to read as follows:***

17 ***"8-4-222. An appeal may be taken from any final order, rule, regulation or other***
18 ***final determination of the commission by those parties who have standing and have exhausted***
19 ***their administrative appeals to the circuit court of the county in which the business, industry,***
20 ***municipality, or thing involved is situated, in the manner provided in §§8-4-223 - 8-4-229."***

21

22 ***SECTION 21. All provisions of this act of a general and permanent nature are***
23 ***amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision***
24 ***Commission shall incorporate the same in the Code.***

25

26 ***SECTION 22. If any provision of this act or the application thereof to any person or***
27 ***circumstance is held invalid, such invalidity shall not affect other provisions or applications of***
28 ***the act which can be given effect without the invalid provision or application, and to this end***
29 ***the provisions of this act are declared to be severable.***

30

31 ***SECTION 23. All laws and parts of laws in conflict with this act are hereby repealed.***

32

/s/Senators Yates

33

34 **APPROVED: 2/18/93**

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