

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Representative McKissack**

A Bill

ACT 336 OF 1995
HOUSE BILL 1398

For An Act To Be Entitled

8 "AN ACT TO AMEND THE WATER POLLUTION CONTROL FACILITIES
9 PROVISIONS CONTAINED IN TITLE 8, CHAPTER 5 OF THE ARKANSAS
10 CODE ANNOTATED, TO PREVENT WATER POLLUTION, AND TO ENSURE
11 RESPONSIBLE OPERATION OF AND TO REQUIRE FINANCIAL
12 ASSURANCE FOR WASTEWATER TREATMENT PLANTS ACROSS THE
13 STATE; AND FOR OTHER PURPOSES."

Subtitle

16 "TO AMEND THE WATER POLLUTION CONTROL
17 FACILITIES PROVISIONS TO PREVENT WATER
18 POLLUTION AND TO ENSURE RESPONSIBLE
19 OPERATION OF AND TO REQUIRE FINANCIAL
20 ASSURANCE FOR WASTEWATER TREATMENT
21 PLANTS."

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

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25 SECTION 1. Title 8, Chapter 5 of the Arkansas Code Annotated is hereby
26 amended to add Subchapter 7 to read as follows:

27 "SUBCHAPTER 7 -- Chronic Noncompliance.

28 8-5-701. Definitions.

29 As used in this chapter, unless the context otherwise requires:

30 (a) Chronic noncompliance means conditions described below that
31 persist at a common sewage system after reasonable efforts by the Arkansas
32 Department of Pollution Control and Ecology to obtain compliance with
33 applicable laws or regulations in one of the following:

34 (i) failure to obtain a permit as required by law;

35 (ii) four or more permit violations within a six month period as
36 set out in the permit issued by the Arkansas Department of Pollution Control

1 and Ecology;

2 (iii) failure to maintain the services of a certified wastewater
3 treatment operator, where applicable; or

4 (iv) demonstrable failure to operate the sewage system so as to
5 prevent the discharge of water borne pollutants in unacceptable
6 concentrations, as defined in the individual permit or the state's water
7 quality standards, to the surface waters or groundwater of the state.

8 (b) Common sewage system means any sewage treatment system and its
9 associated sewage collection and pumping facilities, non-municipal publicly or
10 privately owned, serving two or more individually owned, rented or temporarily
11 occupied lots for the purpose of the collection or disposal of sewage. This
12 term includes systems owned or operated by property owners' associations, non-
13 municipal sewage improvement districts, and owners or managers of non-
14 municipal residential subdivisions.

15 8-5-702. Remedies for Chronic Violations.

16 (a) The Department of Pollution Control and Ecology may petition a
17 chancery court with competent jurisdiction and proper venue to remedy chronic
18 violations by any common sewage system. The court may order any relief
19 authorized by applicable laws, including the imposition of civil penalties,
20 the revocation of the entity's permit, and a court order compelling the entity
21 supplying potable water to the common sewage system to cut off the flow of
22 potable water.

23 (b) If the court finds that circumstances prevent the owner or operator
24 of a common sewage system from operating and maintaining the system in
25 compliance with the law, the Department of Pollution Control and Ecology shall
26 nominate five (5) possible receivers, which the court may appoint one to
27 operate the system subject to the continuing jurisdiction of the court. Any
28 such receiver appointed by the court may exercise any and all legal powers and
29 rights assigned by law to the original owner or operator of the common sewage
30 system, but is immune to any personal liability associated with the operation
31 of the common sewage system. Once a receiver is appointed by the court to
32 operate the common sewage system, the court may make available to the receiver
33 funds pledged by the common sewage system under the minimal financial
34 assurance provision of this statute and in addition, the receiver may assess
35 rates as necessary to operate and maintain the system.

1 (c) If the court determines that the permitted or registered entity
2 cannot equitably satisfy the provisions of this Act or that no feasible
3 alternatives exist, the court shall so certify that determination to the
4 Department of Pollution Control and Ecology, which shall terminate the
5 entity's permit and the court shall request a review by the State Health
6 Officer of the public health impact of an order compelling the entity
7 supplying potable water to the common sewage system to cut off the flow of
8 potable water. If the State Health Officer determines that a greater health
9 hazard exists from the malfunctioning sewage system than the discontinuance of
10 potable water service, then the State Health Officer shall so certify this
11 determination to the court. Then the court shall issue an order compelling
12 the receiver to notify all users of such system, including landowners and
13 tenants, of the State Health Officer's determination. Upon evidence of
14 reasonable notice, the court shall then issue the order to cutoff the flow of
15 potable water.

16 (d) The Department is authorized to institute a civil action in any
17 court of competent jurisdiction to accomplish any or all of the following:

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

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

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

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

31 (5) Recover civil penalties assessed pursuant to Ark. Code Ann. §
32 8-4-103(c).

33 (e) In addition to the remedies provided in subsections (a)-(d) of § 8-
34 5-702, the Department of Pollution Control and Ecology shall have the
35 authority to prohibit new or additional sewer line connections onto a common

1 sewage system meeting the criteria established by § 8-5-701. Once the
2 Department is satisfied that the common sewage system is in compliance with
3 state and federal law, the Department may authorize new or additional sewer
4 line connections onto the common sewage system.

5 8-5-703. Financial Assurance Requirements for Subsequently
6 Permitted Common Sewage Systems.

7 (a) After the effective date of this Act, the Department of Pollution
8 Control and Ecology shall not permit or register any common sewage system
9 serving two or more occupied lots, residences, businesses or other discernible
10 occupied units without the applicant first demonstrating to the Department its
11 financial ability to cover the costs of operating and maintaining the system
12 for a period of five (5) years. This minimal financial assurance may be
13 demonstrated to the Department by: (1) obtaining insurance; (2) passing a
14 financial test; (3) obtaining a letter of credit; (4) obtaining a surety bond;
15 (5) obtaining a trust fund or escrow account; (6) through the use of a
16 combination of insurance, financial test, letter of credit, surety bond, trust
17 fund or escrow account; or (7) an alternative mechanism approved by the
18 Department.

19 (b) After the effective date of this Act, any application for the
20 registration or permitting of a common sewage system shall be accompanied by a
21 reasonable estimation of the yearly operating and maintenance costs of the
22 system, upon which the permitting or registering agency shall base the minimal
23 amount of financial assurance required by this Act.

24 (c) Any financial instrument required by this Act shall be posted to
25 the benefit of the _Arkansas Department of Pollution Control and Ecology._ It
26 is explicitly understood that the Department of Pollution Control and Ecology
27 shall not directly operate and shall not be responsible for the operation of
28 any common sewage system."

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30 SECTION 2. All provisions of this act of a general and permanent nature
31 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
32 Revision Commission shall incorporate the same in the Code.

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34 SECTION 3. If any provision of this act or the application thereof to
35 any person or circumstance is held invalid, such invalidity shall not affect

1 other provisions or applications of the act which can be given effect without
2 the invalid provision or application, and to this end the provisions of this
3 act are declared to be severable.

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5 SECTION 4. All laws and parts of laws in conflict with this act are
6 hereby repealed.

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10 APPROVED: 2-14-95

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