

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

A Bill

ACT 384 OF 1995
SENATE BILL 180

For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF ARKANSAS CODE TITLE
9 8, CONCERNING PROCEDURES OF THE ARKANSAS DEPARTMENT OF
10 POLLUTION CONTROL AND ECOLOGY INCLUDING PERMIT TRANSFER
11 PROCEDURES, NOTIFICATION REQUIREMENTS FOR PUBLIC HEARINGS
12 ON PERMIT APPLICATIONS, THE TIME FOR THIRD PARTY APPEALS,
13 PUBLICATION REQUIREMENTS FOR MAJOR MODIFICATION
14 APPLICATIONS, PERMIT TRANSFERS AND MINOR MODIFICATIONS AND
15 PRELIMINARY HEARING PROCEDURES; AND FOR OTHER PURPOSES."

Subtitle

17 "AN ACT CONCERNING PROCEDURES OF THE
18 ARKANSAS DEPARTMENT OF POLLUTION CONTROL
19 AND ECOLOGY."
20

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

23

24 SECTION 1. Arkansas Code 8-1-106 (e) concerning permit transfers is
25 repealed.

26

27 SECTION 2. Arkansas Code 8-4-203 (b)(3) is amended to read as follows:

28 "(3) Should a hearing be deemed necessary by the department, or in the
29 event the department desires such a hearing, the department shall schedule a
30 public hearing and shall, by first-class mail, notify the applicant and all
31 persons who have submitted comments of the date, time, and place thereof."

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33 SECTION 3. Arkansas Code 8-4-203 is amended to add subsections (f),
34 (g), and (h) as follow:

35 "(f) Permits for the discharge of pollutants to the waters of the state
36 or for prevention of pollution of the waters of the state shall remain freely

1 transferable, provided the applicant for the transfer notifies the director at
2 least thirty (30) days in advance of the proposed transfer date and submits a
3 disclosure statement as required by A.C.A. §8-1-106. Only those reasons set
4 out in A.C.A. §§8-1-106 (b)(1) and (c) shall constitute grounds for denial of
5 a transfer. The permit is automatically transferred to the new permittee
6 unless the director denies the request within thirty (30) days of the receipt
7 of the disclosure statement.

8 (g) In the event of voluminous comments, including but not limited to a
9 petition, the department may require the designation of a representative to
10 accept any notices required by this section.

11 (h) The notice provisions of subsections (b) and (c) shall not apply to
12 permit transfers or minor modifications of existing permits."

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14 SECTION 4. Arkansas Code 8-4-210 is amended to add subsection (e) as
15 follows:

16 "(e) Any permittee or person subject to regulation may petition the
17 commission for a declaratory order as to the application of any rule, statute,
18 permit or order enforced by the department or the commission. Such petitions
19 shall be processed for adjudicatory review in the same manner as appeals under
20 the procedures prescribed by §§8-1-203, 8-4-205, 8-4-212, and 8-4-218 - 8-4-
21 229."

22

23 SECTION 5. Arkansas Code §8-4-103 (d)(4)(A) is amended to read as
24 follows:

25 "(A) If no adjudicatory hearing is held on a proposed order, any
26 person who commented on the proposed order may petition the commission to set
27 aside the order and provide an adjudicatory hearing. A petition to set aside
28 such an order must be filed with the commission within thirty (30) days of
29 service of the order."

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31 SECTION 6. Arkansas Code §8-4-203 (b)(1) is amended to read as follows:

32 "(1) When any application for the issuance of a new permit or a major
33 modification of an existing permit is filed with the department, the
34 department shall cause notice of the application to be published in a
35 newspaper of general circulation in the county in which the proposed facility

1 is to be located."

2

3 SECTION 7. Arkansas Code §8-4-203 (b) (2) is amended to read as follows:

4 "(2) The notice required by this subsection shall advise that any
5 interested person may request a public hearing on the permit application by
6 giving the department a written request within ten (10) days of the
7 publication of the notice."

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9 SECTION 8. Arkansas Code §8-4-203 (b) (4) is repealed.

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11 SECTION 9. Arkansas Code §8-4-203 (c) (1) is amended to read as follows:

12 "(1) Whenever the department proposes to grant or deny any permit
13 application, it shall cause notice of its proposed action to be published in
14 either a newspaper of general circulation in the county in which the facility
15 that is the subject of the application is located, or in the case of a
16 statewide permit, in a newspaper of general circulation in the state. The
17 notice shall afford any interested party thirty (30) calendar days in which to
18 submit comments on the proposed permit action. At the conclusion of the
19 public comment period, the department shall announce in writing its final
20 decision regarding the permit application."

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22 SECTION 10. Arkansas Code §8-4-205 (c) (1) and (2) are amended to read
23 as follow:

24 "(1) Within thirty (30) days of the date the request for a hearing is
25 filed with the commission secretary, a preliminary hearing will be conducted
26 in the name of the commission by the commission's authorized hearing officer.
27 Within a reasonable time after the preliminary hearing, the hearing officer
28 shall enter a written decision determining whether the parties qualify as
29 proper parties under subdivision (b) (1) of this section and whether the
30 request conforms with the requirements under subdivisions (b) (2) and (3) of
31 this section. Any party aggrieved by the decision entered pursuant to this
32 subsection may, within ten (10) business days, request review by the
33 commission.

34 (2) Any contested decision and any final recommended decision of the
35 hearing officer shall be transmitted to the commission . The commission shall

1 consider the recommended decision of the hearing officer and shall either
2 affirm the decision in whole or in part or reverse the decision in whole or in
3 part."

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5 SECTION 11. Arkansas Code Title 8, Subchapter 3 is amended to add a new
6 section to read as follows:

7 "8-4-315. Permit transfers.

8 To the extent consistent with federal requirements, permits issued
9 pursuant to this subchapter may be transferred in accordance with the
10 procedures set out in §8-4-203 (f)."

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

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16 SECTION 13. 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 14. All laws and parts of laws in conflict with this act are
23 hereby repealed.

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APPROVED: 2-20-95

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