

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4

As Engrossed: H3/14/97 H3/20/97 H3/21/97 H3/26/97

A Bill

ACT 1219 OF 1997
HOUSE BILL 2229

5 *By: Representatives Malone, Goodwin, Cunningham, Baker, Bond, Broadway, Cook, Curran, Ferguson, Flanagan, George, Hendren,*
6 *Hunton, Jones, Lancaster, McGinnis, McJunkin, Miller, Milum, Mullenix, Newman, Purdom, Roberts, Rorie, Sheppard, Thomas,*
7 *Willems, and Wooldridge*
8 *By: Senators Bearden, Hopkins, Webb, and Wilson*
9

10

11

For An Act To Be Entitled

12

"AN ACT TO AMEND VARIOUS PROVISIONS OF ARKANSAS

13

ENVIRONMENTAL LAW TO RENAME THE ARKANSAS DEPARTMENT OF

14

POLLUTION CONTROL & ECOLOGY; TO CLARIFY THE RESPECTIVE

15

DUTIES OF THE COMMISSION AND THE DEPARTMENT OF POLLUTION

16

CONTROL & ECOLOGY; TO INCREASE PUBLIC NOTICE REQUIRED

17

PRIOR TO RULEMAKING; TO INCORPORATE OTHER AMENDMENTS

18

ADOPTED THIS SESSION; AND FOR OTHER PURPOSES."

19

20

Subtitle

21

"AN ACT TO RENAME AND CLARIFY THE DUTIES

22

OF THE ARKANSAS DEPARTMENT OF POLLUTION

23

CONTROL & ECOLOGY."

24

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

26

27 SECTION 1. Legislative intent. With Act 1230 of 1991, the General
28 Assembly sought to delineate the respective responsibilities of the Arkansas
29 Pollution Control and Ecology Commission and the Arkansas Department of
30 Pollution Control & Ecology. Confusion on these issues in the public's
31 perception continues, however, primarily because of the similarity in the
32 names of these entities. The purpose of this Act is to achieve the
33 legislative intent of Act 1230 of 1991 and to definitively assign the
34 executive, adjudicatory, and rulemaking roles for the State's regulatory
35 functions concerning protection of the environment.

36

1 SECTION 2. "Arkansas Department of Pollution Control & Ecology" renamed
2 to "Arkansas Department of Environmental Quality".

3 (a) Effective March 31, 1999, the "Arkansas Department of Pollution
4 Control & Ecology" or "Department," as it is referred to or empowered
5 throughout the Arkansas Code Annotated, is hereby renamed. In its place, the
6 "Arkansas Department of Environmental Quality" is hereby established,
7 succeeding to the general powers and responsibilities previously assigned to
8 the Arkansas Department of Pollution Control & Ecology. The Director of the
9 Arkansas Department of Pollution Control & Ecology is directed to identify and
10 revise all inter-agency agreements, financial instruments, funds, and other
11 necessary legal documents in order to effect this change by March 31, 1999.

12 (b) Nothing in this Act shall be construed as impairing the powers and
13 authorities of the Arkansas Department of Pollution Control and Ecology prior
14 to the effective date of the name change.

15

16 SECTION 3. The codification title of Title 8, Chapter 1, Subchapter 2,
17 is amended to read as follows:

18 "~~Additional~~ Powers of the Department and Commission."

19

20 SECTION 4. Selected provisions of Title 8, Chapter 1, Subchapter 2, are
21 amended to read as follows:

22 "8-1-201. Legislative intent.

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

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

35

36 SECTION 5. Selected provision of Title 8, Chapter 4, Subchapter 2 are

1 amended to read as follows:

2 "8-4-201. Powers and duties of department and Commission generally.

3 (a) The Arkansas Department of Pollution Control and Ecology

4 Commission, or its successor, is given and charged with the following powers
5 and duties:

6 (1) ENFORCEMENT OF LAWS. To administer and enforce all laws and
7 regulations relating to the pollution of any waters of the state;

8 (2) INVESTIGATIONS AND SURVEYS.

9 (A) To investigate the extent, character, and effect of the
10 pollution of the waters of this state;

11 (B) To conduct investigations, research, surveys, and studies and
12 gather data and information necessary or desirable in the administration or
13 enforcement of pollution laws; ~~and~~

14 ~~—— (C) To make such classification of the waters of this state as it may
15 deem advisable;~~

16 ~~—— (3) (2) STANDARDS. To establish and alter such reasonable pollution and
17 water quality standards and classifications for any waters of this state in
18 relation to the use to which they are or may be put as it shall deem necessary
19 for the purposes of this chapter;~~

20 ~~—— (4) (3) PROGRAM. To prepare a comprehensive program for the elimination
21 or reduction of the pollution of the waters of this state, including
22 application for and delegation of federal regulatory programs; and~~

23 ~~—— (5) (4) PLANS OF DISPOSAL SYSTEMS. To require to be submitted and to
24 approve plans and specifications for disposal systems, or any part of them,
25 and to inspect the construction thereof for compliance with the approved plans
26 thereof; ~~and~~ .~~

27 ~~—— (6) RULES AND REGULATIONS. Consistent with 8-4-202, to adopt, modify, or
28 repeal rules and regulations and to declare moratoria or suspension of the
29 processing of a type or category of permits.~~

30 (b) The Arkansas Commission on Pollution Control & Ecology is given and
31 charged with the following powers and duties:

32 (1) Promulgation of rules and regulations, including water quality
33 standards and the classification of the waters of state, and moratoriums or
34 suspensions of the processing of types or categories of permits, implementing
35 the substantive statutes charged to the department for administration.

36 (A) In promulgation of such rules and regulations, prior to the

1 submittal to public comment and review of any rule, regulation, or change to
2 any rule or regulation that is more stringent than federal requirements, the
3 Commission shall duly consider the economic impact and the environmental
4 benefit of such rule or regulation on the people of the State of Arkansas,
5 including those entities that will be subject to the regulation.

6 (B) The Commission shall promptly initiate rulemaking proceedings to
7 further implement the analysis required under subdivision (b)(1)(A) of this
8 section.

9 (C) The extent of the analysis required under subdivision (b)(1)(A) of
10 this section shall be defined in the Commission's rulemaking required under
11 subdivision (b)(1)(B) of this section. It will include a written report which
12 shall be available for public review along with the proposed rule in the
13 public comment period.

14 (D) Upon completion of the public comment period, the Commission shall
15 compile a rulemaking record or response to comments demonstrating a reasoned
16 evaluation of the relative impact and benefits of the more stringent
17 regulation;

18 (2) Promulgation of rules, regulations, and procedures not otherwise
19 governed by applicable law which the Commission deems necessary to secure
20 public participation in environmental decision-making processes;

21 (3) Promulgation of rules and regulations governing administrative
22 procedures for challenging or contesting department actions;

23 (4) In the case of permitting or grants decisions, provide the right to
24 appeal a permitting or grants decision rendered by the director or his
25 delegatee;

26 (5) In the case of an administrative enforcement or emergency action,
27 provide the right to contest any such action initiated by the director;

28 (6) Instruct the director to prepare such reports or perform such
29 studies or investigations as will advance the cause of environmental
30 protection in the state;

31 (7) Make recommendations to the director regarding overall policy and
32 administration of the department, provided, however, that the director shall
33 always remain within the plenary authority of the Governor; and

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

35 8-4-202. Rules and regulations.

36 (a) The Arkansas Pollution Control and Ecology Commission is given and

1 charged with the power and duty to adopt, modify, or repeal, after notice and
2 public hearings, rules and regulations implementing or effectuating the powers
3 and duties of the department and the Commission under this chapter.

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

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

10 (2) Requirements and standards for equipment and procedures for
11 monitoring contaminant discharges at their sources including publicly owned
12 treatment facilities and industrial discharges into such facilities, the
13 collection of samples, and the collection, reporting, and retention of data
14 resulting from such monitoring; and

15 (3) Water quality standards, performance standards, and pretreatment
16 standards.

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

23 (1) In the event the petition is denied, the decision of the Commission
24 will be deemed a final order subject to appeal as provided in subdivision
25 (d)(5) of this section.

26 (2) The record for appeal, in a petition denial shall consist of the
27 petition for rulemaking filed with the Commission, the Commission's written
28 statement setting out the reasons for denial, and any document referenced
29 therein.

30 (d)(1) Prior to the adoption, amendment, or repeal of any rule or
31 regulation or prior to suspending the processing of a type or category of
32 permits or the declaration of a moratorium on a type or category of permits,
33 the Commission shall give at least ~~twenty (20)~~ thirty (30) days' notice of its
34 intended action. The notice shall include a statement of the substance of the
35 intended action, a description of the subjects and issues involved, and the
36 time, place, and manner in which interested persons may make comments. The

1 notice shall be mailed to all persons who have requested advance notice of
2 rulemaking proceedings. The notice shall also be published at least twice in
3 newspapers having a general statewide circulation and in the appropriate
4 industry, trade, or professional publications the Commission may select.

5 (2) All interested parties shall be afforded a reasonable opportunity to
6 submit written data, information, views, opinions, and arguments and to make
7 oral statements concerning the proposed rule, regulation, suspension, or
8 moratorium prior to a decision being rendered by the Commission. All written
9 material, photographs, published material, and electronic media received by
10 the Commission shall be preserved and, along with a record of all oral
11 comments made at any public hearing, shall become an element of the record of
12 rulemaking. Any person who considers himself injured in his person, business,
13 or property by final agency action under this section shall be entitled to
14 judicial review of the action under this section.

15 (3) If, in response to comments, the Commission amends a proposed
16 regulation to the extent that the rule would have an effect not previously
17 expressed in the notice required by subdivision (d)(1) of this section, the
18 Commission shall provide another adequate public notice. This subdivision
19 shall not, however, require a second public notice if the final regulation is
20 a logical outgrowth of the regulation proposed in the prior notice.

21 (4) The Commission shall compile and maintain a record of rulemaking
22 that shall contain:

23 (A)(i) A copy of all notices described in subsection (d) of this
24 section, and a concise general statement of the basis and purpose of the
25 proposed rule, which shall include a written explanation of the necessity of
26 the regulation and a demonstration that any technical regulation or technical
27 standard is based on generally accepted scientific knowledge and engineering
28 practices.

29 (ii) For any standard or regulation that is identical to a regulation
30 promulgated by the United States Environmental Protection Agency, this portion
31 of the record may be satisfied by reference to the Code of Federal
32 Regulations.

33 (iii) In all other cases the department must provide its own
34 justification with appropriate references to the scientific and engineering
35 literature or written studies conducted by the department;

36 (B) Copies of all written material, photographs, published materials,

1 electronic media, and the record of all oral comments received by the
2 Commission during the public comment period and hearings;

3 (C) A responsive summary which groups public comments into similar
4 categories and explains why the Commission accepted or rejected the rationale
5 of each category;

6 (5)(A) The decisions of the Commission with regard to this section are
7 final and may be judicially appealed to the appropriate circuit court as
8 provided in 8-4-222 within thirty (30) days after filing with the Office of
9 the Secretary of State by persons who have standing as set out in subdivision
10 (d)(2) of this section.

11 (B) The record for review shall consist of a copy of the regulation and
12 the record of rulemaking described in subdivision (d)(4) of this section.

13 (C) Rule changes, suspensions, or moratoria on types of categories of
14 permits adopted by the Commission shall be stayed and not take effect during
15 the pendency of the appeal, except as specified in subsection (e) of this
16 section.

17 (e)(1) If the Commission determines that imminent peril to the public
18 health, safety, or welfare requires immediate change in the rules, or
19 immediate suspension, or moratorium on categories or types of permits, it may,
20 after documenting the facts and reasons, declare an emergency and implement
21 emergency rules, regulations, suspensions, or moratoria.

22 (2) No rule, regulation, suspension, or moratorium adopted under an
23 emergency declaration shall be effective for longer than ~~ninety (90)~~ one
24 hundred eighty (180) days.

25 (3) The imminent loss of federal funding, certification, or
26 authorization for any program administered by the department shall establish a
27 prima facie case of imminent peril to the public health, safety, or welfare.

28 8-4-203. Permits generally.

29 (a) The Arkansas Department of Pollution Control and Ecology Commission,
30 or its successor, is given and charged with the power and duty to issue,
31 continue in effect, revoke, modify, or deny permits, under such conditions as
32 it may prescribe, to prevent, control, or abate pollution, for the discharge
33 of sewage, industrial waste, or other wastes into the waters of the state,
34 including the disposal of pollutants into wells, and for the installation,
35 modification, or operation of disposal systems or any part of them.

36 (b)(1) When any application for the issuance of a new permit or a major

1 modification of an existing permit is filed with the department, the
2 department shall cause notice of the application to be published in a
3 newspaper of general circulation in the county in which the proposed facility
4 is to be located.

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

9 (3) Should a hearing be deemed necessary by the department, or in the
10 event the department desires such a hearing, the department shall schedule a
11 public hearing and shall, by first class mail, notify the applicant and all
12 persons who have submitted comments of the date, time, and place thereof.

13 (4) [Repealed.]

14 (c)(1)(A) Whenever the department proposes to grant or deny any permit
15 application, it shall cause notice of its proposed action to be published in
16 either a newspaper of general circulation in the county in which the facility
17 that is the subject of the application is located, or, in the case of a
18 statewide permit, in a newspaper of general circulation in the state.

19 (B) The notice shall afford any interested party thirty (30) calendar
20 days in which to submit comments on the proposed permit action.

21 (C) At the conclusion of the public comment period, the department shall
22 announce in writing its final decision regarding the permit application.

23 (2) The department's final decision shall include a response to each
24 issue raised in any public comments received during the public comment period.
25 In the case of any discharge limit, emission limit, environmental standard,
26 analytical method, or monitoring requirements the record of the proposed
27 action and the response shall include a written explanation of the rationale
28 for the proposal, demonstrating that any technical requirements or standards
29 are based upon generally accepted scientific knowledge and engineering
30 practices. For any standard or requirement that is identical to a duly
31 promulgated and applicable regulation, this demonstration may be satisfied by
32 reference to the regulation. In all other cases, the department must provide
33 its own justification with appropriate reference to the scientific and
34 engineering literature or written studies conducted by the department.

35 (d)(1) All costs of publication of notice under this section shall be
36 paid by the department with reimbursement by the applicant to be made to the

1 department prior to the issuance of the final permit.

2 (2) All moneys received pursuant to this subsection shall be classified
3 as refunds to expenditures.

4 (e) Only those persons who submit comments on the record during the
5 public comment period and the applicant shall have standing to appeal the
6 decision of the department to the Commission.

7 (f)(1) Permits for the discharge of pollutants to the waters of the
8 state or for prevention of pollution of the waters of the state shall remain
9 freely transferable, provided the applicant for the transfer notifies the
10 director at least thirty (30) days in advance of the proposed transfer date
11 and submits a disclosure statement as required by § 8-1-106.

12 (2) Only those reasons set out in § 8-1-106(b)(1) and (c) shall
13 constitute grounds for denial of a transfer.

14 (3) The permit is automatically transferred to the new permittee unless
15 the director denies the request within thirty (30) days of the receipt of the
16 disclosure statement.

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

20 (h) The notice provisions of subsections (b) and (c) of this section
21 shall not apply to permit transfers or minor modifications of existing
22 permits.

23 8-4-204. Permits) Revocation.

24 The Arkansas Department of Pollution Control and Ecology Commission, or
25 its successor, is given and charged with the power and duty to revoke, modify,
26 or suspend, in whole or in part, for cause any permit issued under this
27 chapter, including without limitation:

28 (1) Violation of any condition of the permit;

29 (2) Obtaining a permit by misrepresentation or failure to disclose fully
30 all relevant facts; or

31 (3) Change in any applicable regulation or change in any preexisting
32 condition affecting the nature of the discharge that requires either a
33 temporary or permanent reduction or elimination of the permitted discharge.

34 8-4-210. Investigations and hearings generally.

35 (a) The Arkansas Pollution Control and Ecology Commission is given and
36 charged with the power and duty to conduct such investigations and hold such

1 hearings as it may deem advisable and necessary for the discharge of its
2 duties under this chapter and to authorize any member, employee, or agent
3 appointed by it to conduct such investigations or hold such hearings.

4 (b) In any such hearing or investigation, any member of the commission
5 or any employee or agent thereto authorized by the commission may administer
6 oaths, examine witnesses, and issue, in the name of the commission, subpoenas
7 requiring the attendance and testimony of witnesses and the production of
8 evidence relevant to any matter involved in such hearing or investigation.

9 (c) Witnesses shall receive the same fees and mileage as in civil
10 actions, to be paid out of funds appropriated to the commission.

11 (d) In case of contumacy or refusal to obey a subpoena issued under
12 this section, or refusal to testify, the circuit court of the county where the
13 proceeding is pending or in which the person guilty of such contumacy or
14 refusal to obey is found or resides shall have jurisdiction, upon application
15 of the commission or its authorized member, employee, ~~or agent,~~ or hearing
16 officer, to issue to the person an order requiring him to appear and testify
17 or produce evidence, as the case may require. Any failure to obey the order of
18 the court may be punished by the court as contempt.

19 (e) In accordance with the above powers, the commission is authorized
20 to conduct adjudicatory hearings providing an aggrieved person with standing a
21 forum for contesting any decision of the department. For the purposes of such
22 hearings, the commission's jurisdiction shall be construed as including all
23 regulatory programs vested with the department.

24 8-4-211. Declaratory Orders ~~Commission's general authority.~~

25 ~~— (a) The Arkansas Pollution Control and Ecology Commission is given and~~
26 ~~charged with the power and duty to make, issue, modify, and revoke orders:~~

27 ~~— (1) Prohibiting or abating the discharge of sewage, industrial waste, or~~
28 ~~other wastes into any waters of the state;~~

29 ~~— (2) Requiring the construction of new disposal systems, or any parts~~
30 ~~thereof, or the modification, extension, or alteration of existing disposal~~
31 ~~systems, or any parts thereof, or the adoption of other remedial measures to~~
32 ~~prevent, control, or abate pollution; and~~

33 ~~— (3) Setting standards of water quality, classifying waters, or~~
34 ~~evidencing any other determination by the Commission under this chapter.~~

35 ~~— (b)(1) Any permittee or person subject to regulation may petition the~~
36 ~~Commission for a declaratory order as to the application of any rule, statute,~~

1 permit, or order enforced by the department or the Commission.

2 ~~—(2) Such petitions shall be processed for adjudicatory review in the~~
3 ~~same manner as appeals under the procedures prescribed by §§ 8-1-203, 8-4-205,~~
4 ~~8-4-212, and 8-4-218) 8-4-229.~~

5 8-4-212. Adjudicatory Orders ~~)~~ Hearings and Orders.

6 (a) ~~No order of general application shall be issued until the Arkansas~~
7 ~~Pollution Control and Ecology Commission or its authorized officer, member, or~~
8 ~~agent shall have held a public hearing upon the matter therein involved. No~~
9 ~~final order resolving a contested decision of the department shall be issued~~
10 ~~until the commission has provided persons aggrieved who have standing the~~
11 ~~opportunity for an adjudicatory hearing upon the matter.~~

12 (b) Any person who will be directly affected by the order shall have the
13 right to be heard at the hearing, to submit evidence, and to be represented by
14 counsel.

15 (c) Written notice specifying the time and place of the hearing shall be
16 served by the Commission, in the manner provided by § 8-4-214, upon all
17 persons known by it to be directly affected by the order, not less than ten
18 (10) days before the date of the hearing.

19 (d) A copy of any order issued by the Commission after the hearing shall
20 also be served upon the persons.

21 8-4-215. Intergovernmental cooperation.

22 (a) The Arkansas Department ~~Pollution Control and Ecology~~ , or its
23 successor, and the Commission, so far as it is not inconsistent with its
24 duties under the laws of this state, may assist and cooperate with any agency
25 of another state or the United States in any matter relating to water
26 pollution control.

27 (b) The Commission or department may receive and accept money, property,
28 or services from any person or from any agency described in subsection (a) of
29 this section or from any other source for any water pollution control purpose
30 within the scope of its functions under this chapter. All moneys so received
31 shall be used for the operation and activities of the Commission or department
32 and for no other purposes.

33 (c) The Department of Pollution Control and Ecology, or its successor,
34 may enter into agreements with the responsible authorities of the United
35 States or other states, subject to approval by the Governor, relative to
36 policies, methods, means, and procedures to be employed to control pollution

1 of any interstate waters and may carry out these agreements by appropriate
2 general and special orders. This power shall not be deemed to extend to the
3 modification of any agreement with any other state concluded by direct
4 legislative act. However, unless otherwise provided, the department shall be
5 the agency for the administration and enforcement of any such legislative
6 agreement.

7 8-4-217. Unlawful actions.

8 (a) It shall be unlawful for any person to:

9 (1) Cause pollution, as defined in § 8-4-102, of any of the waters of
10 this state; or

11 (2) Place or cause to be placed any sewage, industrial waste, or other
12 wastes in a location where it is likely to cause pollution of any waters of
13 this state; or

14 (3) Violate any provisions of this chapter or of any rule, regulation,
15 or order adopted by the Arkansas Pollution Control and Ecology Commission
16 under this chapter or of a permit issued under this chapter by the department;
17 or

18 (4) Knowingly to make any false statement, representation, or
19 certification in any application, record, report, plan, or other document
20 filed or required to be maintained under this chapter; or

21 (5) Falsify, tamper with, or knowingly render inaccurate any monitoring
22 device or method required to be maintained under this chapter; or

23 (6) Sell, offer or expose for sale, give, or furnish any synthetic
24 detergent or detergent containing any phosphorus, expressed as elemental
25 phosphorus, including synthetic detergents or detergents manufactured for use
26 as laundry or dishwashing detergents within this state from and after January
27 1, 1994, except as provided below:

28 (A) Products that may be used, sold, manufactured, or distributed for
29 use or sale regardless of phosphorus content include:

30 (i) A detergent:

31 (a) Used in dairy, beverage, or food processing cleaning equipment;

32 (b) Used in hospitals, veterinary hospitals, clinics, health care
33 facilities, or in agricultural production;

34 (c) Used by industry for metal cleaning or reconditioning;

35 (d) Manufactured, stored, or distributed for use or sale outside the
36 state;

1 (e) Used in any laboratory, including a biological laboratory, research
2 facility, chemical laboratory, and engineering laboratory;

3 (f) Used in a commercial laundry that provides laundry services for a
4 hospital, health care facility, or veterinary hospital; or

5 (g) Used for surface cleaning, appliance cleaning, or specialty home
6 cleaning, and not for dishwashing or laundry;

7 (ii) A phosphoric acid product, including a sanitizer, brightener, acid
8 cleaner, or metal conditioner; and

9 (iii) A substance the department excludes from the phosphorus
10 limitations of this section based on a finding that compliance with this
11 section would:

12 (a) Create a significant hardship on the user; or

13 (b) Be unreasonable because of the lack of an adequate substitute
14 cleaning agent that could be substituted for the subject cleaning agent
15 without significant cost or effect differences;

16 (B) A person may use, sell, manufacture, or distribute for use or sale
17 a laundry detergent that contains one-half percent (.5%) phosphorus or less
18 that is incidental to manufacturing; and

19 (C) A person may use, sell, manufacture, or distribute for use or sale
20 a dishwashing detergent that contains eight and seven-tenths percent (8.7%)
21 phosphorus or less by weight.

22 (b)(1) It shall be unlawful for any person to engage in any of the
23 following acts without having first obtained a written permit from the
24 ~~Commission~~ department:

25 (A) To construct, install, modify, or operate any disposal system or any
26 part thereof, or any extension or addition thereto, that will discharge into
27 any of the waters of this state; or

28 (B) To increase in volume or strength any sewage, industrial waste, or
29 other wastes in excess of the permissive discharges specified under any
30 existing permit; or

31 (C) To construct, install, or operate any building, plant, works,
32 establishment, or facility, or any extension or modification thereof, or
33 addition thereto, the operation of which would result in discharge of any
34 wastes into the waters of this state or would otherwise alter the physical,
35 chemical, or biological properties of any waters of this state in any manner
36 not already lawfully authorized; or

1 (D) To construct or use any new outlet for the discharge of any wastes
2 into the waters of this state; or

3 (E) To discharge sewage, industrial waste, or other wastes into any of
4 the waters of this state.

5 (2) The ~~Commission~~ department may require the submission of such plans,
6 specifications, and other information as it deems relevant in connection with
7 the issuance of disposal permits.

8 8-4-218. Violations of chapter, orders, rules, etc.) Hearings) Notice.

9 (a) Whenever the Arkansas Department of Pollution Control and Ecology
10 ~~Commission, or its successor~~, determines that there are reasonable grounds to
11 believe that there has been a violation of any of the provisions of this
12 chapter or any order, rule, or regulation of the Commission, it may give
13 written notice to the alleged violator specifying the causes of complaint.

14 (b) The notice shall require that the matters complained of be corrected
15 or that the alleged violator appear before the Commission at a time and place
16 specified in the notice and answer the charges complained of.

17 (c) The notice shall be served upon the alleged violator in accordance
18 with the provisions of ~~§~~ 8-4-214 not less than ten (10) days before the time
19 set for the hearing.

20 8-4-219. Violations of chapter, orders, rules, etc. - Hearings -
21 Conduct.

22 (a) The Arkansas Pollution Control and Ecology Commission shall afford
23 an opportunity for a fair hearing to the alleged violator at the time and
24 place specified in the notice, or any modification of the notice.

25 (b) The hearings may be conducted by the Commission or its ~~authorized~~
26 ~~officer, member, or agent~~ hearing officer, who shall have the power and
27 authority to conduct hearings in the name of the Commission at any time and
28 place.

29 (c) A record or summary of the proceedings of the hearings shall be
30 taken and filed at the office of the Commission.

31 8-4-220. Violation of chapter, orders, rules, etc. - Order of ~~Commission~~
32 department without hearing.

33 (a) When the Arkansas Department of Pollution Control and Ecology
34 ~~Commission, or its successor~~, finds that an emergency exists requiring
35 immediate action to protect the public health or welfare, it may, without
36 notice or hearing, issue an order reciting the existence of such emergency and

1 requiring that such action be taken as it deems necessary to meet the
2 emergency.

3 (b) Notwithstanding the provisions of §§ 8-4-218 and 8-4-219, the order
4 shall be effective immediately.

5 (c) Any person to whom the order is directed shall comply immediately
6 but, on application to the Commission, shall be afforded a hearing within ten
7 (10) days after receipt of a written request therefor.

8 (d) On the basis of the hearing, the Commission shall continue the order
9 in effect, revoke it, or modify it.

10 8-4-223 Appeals -- Notice.

11 (a)(1) Within thirty (30) days after service of a copy of the final
12 order, rule, regulation, or other final determination, ~~the appellant shall~~
13 ~~serve a notice of appeal on of~~ the commission, ~~through its secretary.~~ the
14 appellant may file a notice of appeal with the circuit court of the county in
15 which the business, industry, municipality, or thing involved is situated.

16 (2) ~~However, during the thirty-day period and for good cause shown, the~~
17 ~~court may extend the time not to exceed an additional sixty (60) days.~~ A
18 copy of the notice of appeal shall be served upon the secretary of the
19 commission by personal delivery or by mail with a return receipt requested
20 within ten (10) days of filing with the circuit court.

21 (b)(1) The notice of appeal shall ~~refer to~~ state the action of the
22 commission appealed from, shall specify the grounds of the appeal, including
23 points of both law and fact which are asserted or questioned by the appellant,
24 and may contain any other allegations or denials of fact pertinent to the
25 appeal.

26 (2) The notice of appeal shall state an address within the state at
27 which service of ~~notice~~ a response to the notice of appeal and other papers in
28 the matter may be made upon the appellant.

29 (c) ~~The original~~ Upon filing the notice of appeal, ~~with proof of~~
30 ~~service, shall be filed by the appellant~~ with the clerk of the circuit court,
31 the circuit court within ten (10) days after service of the notice upon the
32 ~~commission, and thereupon the court shall have jurisdiction of the appeal.~~

33 8-4-226. Appeal - Return Response by commission and record.

34 (a)(1) Within thirty (30) days after service ~~and filing~~ of the notice
35 of appeal, on the commission secretary, through its director shall make,
36 ~~certify, and~~ the commission shall file with the clerk of the circuit court

1 having jurisdiction of the appeal a ~~return comprised of a copy of any~~
2 ~~application, petition, or other material paper whereon the action of the~~
3 ~~commission appealed from was based; a copy of the order, rule, regulation, or~~
4 ~~decision appealed from; all testimony, exhibits, and other evidence submitted~~
5 ~~to the commission; a statement of any findings of fact or rulings or~~
6 ~~conclusions of law made by the commission in the matter; and such other~~
7 ~~statements, admissions, or denials upon questions of law or fact raised by the~~
8 ~~appeal as the commission may deem pertinent~~ response to the notice of appeal
9 and the record upon which the final order, rule, regulation, or other final
10 determination complained of was entered.

11 (2) The thirty-day period for filing a response to the notice of appeal
12 and the record by the commission may be extended by the court for cause shown
13 for not more than an additional sixty (60) days.

14 (3) The record shall consist of a copy of any application or petition,
15 all pleadings, or other material paper whereon the action of the commission
16 appealed from was based; a statement of any findings of fact, rulings, or
17 conclusions of law made by the commission; a copy of the final order, rule,
18 regulation, or other final decision appealed from; and all testimony,
19 exhibits, and other evidence submitted to the commission in the case. The
20 parties to the appeal may stipulate that only a specified portion of the
21 record shall be filed with the circuit court.

22 (4) A response to the notice of appeal filed by the commission shall
23 consist of any statements, admissions, or denials upon the questions of law or
24 fact raised in the notice of appeal as the commission may deem pertinent.

25 (b) Within the time allowed for making and filing the ~~return,~~
26 response, a copy thereof of the response shall be mailed to or served upon the
27 appellant or his attorney.

28 (c)(1) The allegations or new matter in the ~~return~~ response shall be
29 deemed to be denied by the appellant unless expressly admitted, and no further
30 pleadings shall be interposed.

31 (2) Otherwise, the allegations of the ~~notices~~ notice of appeal and
32 ~~return~~ response shall have like effect as the pleadings in a civil action and
33 shall be subject to like proceedings, so far as applicable. ⓧ

34 8-4-227. Appeal -- Review by Court.

35 (a) The appeal shall be heard and determined by the court upon the
36 issues raised by the notice of appeal and ~~return~~ response according to the

1 rules relating to the trial of civil actions, so far as applicable.

2 (b) If, before the date set for hearing, application is made to the
3 court for leave to present additional evidence and the court finds that the
4 evidence is material and that there were good reasons for failure to present
5 it in the proceeding before the ~~agency~~ commission, then the court may order
6 that the additional evidence be taken before the ~~agency~~ commission upon such
7 conditions as may be just. The ~~agency~~ commission may modify its findings and
8 decision by reason of the additional evidence and shall file that evidence and
9 any modifications, new findings, or decisions with the reviewing court.

10 (c)(1) The review shall be conducted by the court without a jury and
11 shall be confined to the record, except that in cases of alleged
12 irregularities in procedure before the ~~agency~~ commission, not shown in the
13 record, testimony may be taken before the court.

14 (2) The court shall, upon request, hear oral argument and receive
15 written briefs.

16 (d) The court may affirm the decision of the ~~agency~~ commission or
17 vacate or suspend the decision, in whole or part, and remand the case to the
18 commission for further action in conformity with the decision of the court if
19 the action of the commission is:

- 20 (1) In violation of constitutional or statutory provisions;
21 (2) In excess of the ~~agency's~~ commission's statutory authority;
22 (3) Made upon unlawful procedure;
23 (4) Affected by other error of law;
24 (5) Not supported by substantial evidence of record; or
25 (6) Arbitrary, capricious, or characterized by abuse of
26 discretion."

27

28 SECTION 6. Selected provisions of Title 8, Chapter 4, Subchapter 3, are
29 amended to read as follows:

30 "8-4-303. Definitions.

31 As used in this subchapter, unless the context otherwise requires:

32 (1) 'Air contaminant' means any solid, liquid, gas, or vapor or any
33 combination thereof;

34 (2) 'Air pollution' means the presence in the outdoor atmosphere of one
35 (1) or more air contaminants in quantities, of characteristics, and of a
36 duration which are materially injurious, or can be reasonably expected to

1 become materially injurious to human, plant, or animal life or to property, or
2 which unreasonably interfere with enjoyment of life or use of property
3 throughout the state or throughout the area of the state as shall be affected
4 thereby;

5 (3) 'Air contamination' means the presence in the outdoor atmosphere of
6 one (1) or more air contaminants which contribute to a condition of air
7 pollution;

8 (4) 'Air contamination source' means any source at, from, or by reason
9 of which there is emitted into the atmosphere any air contaminant, regardless
10 of who owns or operates the building, premises, or other property in, at, or
11 on which such source is located or the facility, equipment, or other property
12 by which the emission is caused or from which the emission comes;

13 (5) 'Air-cleaning device' means any method, process, or equipment which
14 removes, reduces, or renders less noxious air contaminants discharged into the
15 atmosphere;

16 (6) 'Area of the state' means any city or county, or portion thereof, or
17 other substantial geographical area of the state as may be designated by the
18 Arkansas Pollution Control and Ecology Commission;

19 (7) 'Commission' means the Arkansas Pollution Control and Ecology
20 Commission;

21 (8) 'Person' means any individual, partnership, firm, company, public or
22 private corporation, association, joint-stock company, trust, estate,
23 political subdivision, or any agency, board, department, or bureau of the
24 state, or any other legal entity whatever which is recognized by law as the
25 subject of rights and duties.

26 (9) 'Department' means the Arkansas Department of Pollution Control and
27 Ecology, or its successor.

28 (10) 'Director' means the director of the Arkansas Department of
29 Pollution Control and Ecology, or its successor.

30 8-4-307. Private rights unchanged.

31 (a) Persons other than the state or the ~~Arkansas department Pollution~~
32 ~~Control and Ecology Commission~~ shall not acquire actionable right by virtue of
33 this subchapter. The basis for proceedings that result from violation of any
34 standard, rule, or regulation promulgated by the Commission shall inure solely
35 to and shall be for the benefit of the people of the state generally, and it
36 is not intended to create in any way new rights or to enlarge existing rights

1 or to abrogate existing private rights.

2 (b) A determination by the ~~Commission~~ department that air pollution or
3 air contamination exists or that any standard, rule, or regulation has been
4 violated, whether or not a proceeding or action is brought by the state, shall
5 not create, by reason thereof, any presumption of law or finding of fact which
6 shall inure to, or be for the benefit of, any person other than the state.

7 8-4-308. Industrial secrets confidential.

8 (a)(1)(A) Any information which constitutes a trade secret under ~~§~~
9 4-75-601 et seq. which is obtained by the ~~Arkansas~~ department or Pollution
10 ~~Control and Ecology~~ Commission or its employees in the administration of this
11 chapter shall be kept confidential, except for emission data which is
12 submitted to the state, local agency, or the Environmental Protection Agency,
13 which is otherwise obtained by any of those agencies pursuant to the federal
14 Clean Air Act.

15 (B) Only such emission data is to be publicly available.

16 (2)(A) The manner and rate of operation of the source, if such
17 information is a trade secret, shall be kept confidential.

18 (B) Provided, that the identity, amount, frequency, and concentration
19 of the emissions is publicly available.

20 (b) Any violation of this section shall be unlawful and constitute a
21 misdemeanor.

22 8-4-309. Construction limited - Exception.

23 (a) Nothing contained in this subchapter shall be construed as amending
24 or repealing ~~§~~ 20-21-201 et seq., concerning the control of radiation, or as
25 granting to the ~~Arkansas Pollution Control and Ecology~~ department or
26 Commission any jurisdiction or authority with respect to air conditions
27 existing solely within the property boundaries of any plant, works, or shop or
28 with respect to employer-employee relationships as to health and safety
29 hazards.

30 (b) Notwithstanding the preceding limitation, ~~the Arkansas~~ department
31 and Pollution Control and Ecology Commission shall have jurisdiction and
32 authority over air conditions associated with the removal, encapsulation,
33 enclosure, transportation, or disposal of asbestos-containing material
34 regardless of whether such removal, encapsulation, enclosure, transportation,
35 or disposal is conducted within the property boundaries of any plant, works,
36 or shop.

1 8-4-310. Unlawful actions.

2 (a) It shall be unlawful and constitute a misdemeanor:

3 (1) Knowingly to cause air pollution as defined in ~~§~~ 8-4-303;

4 (2) To construct, install, use, or operate any source capable of
5 emitting air contaminants without having first obtained a permit to do so, if
6 required by the regulations of the ~~Arkansas Pollution Control and Ecology~~
7 Commission, or to do so contrary to the provisions of any permit issued by the
8 ~~Commission~~ or department or after any such permit has been suspended or
9 revoked; or

10 (3) To violate any rule, regulation, or order of the Commission issued
11 pursuant to this chapter.

12 (b) The liabilities imposed for violation of subdivisions (a)(1), (2),
13 and (3) of this section or any other provision of this chapter shall not apply
14 with respect to any unintended violation caused by ~~an act of God~~, war, strike,
15 riot, or other catastrophe, or accidental breakdown of equipment if promptly
16 repaired.

17 8-4-311. Powers generally.

18 (a) The Arkansas Department of Pollution Control and Ecology, or its
19 successor, Commission shall have the power to:

20 (1) Develop and effectuate a comprehensive program for the prevention
21 and control of all sources of pollution of the air of this state;

22 (2) Advise, consult, and cooperate with other agencies of the state,
23 political subdivisions, industries, other states, the federal government, and
24 with affected groups in furtherance of the purposes of this chapter;

25 (3) Encourage and conduct studies, investigations, and research relating
26 to air pollution and its causes, prevention, control, and abatement, as it may
27 deem advisable and necessary, ~~and after notice and a public hearing, establish~~
28 ~~reasonable air purity standards for areas of the state consistent with the~~
29 ~~intent of this chapter;~~

30 (4) Collect and disseminate information relative to air pollution, and
31 its prevention and control;

32 (5) Consider complaints, and make investigations, ~~and hold hearings;~~

33 (6) Encourage voluntary cooperation by the people, municipalities,
34 counties, industries, and others in preserving and restoring the purity of air
35 within the state;

36 (7) Administer and enforce all laws and regulations relating to

1 pollution of the air;

2 (8) Represent the state in any and all matters pertaining to plans,
3 procedures, or negotiations for interstate compacts in relation to air
4 pollution control;

5 (9) Cooperate with and receive moneys from the federal government or any
6 other source for the study and control of air pollution. The ~~Commission~~
7 department is designated as the official state air pollution control agency
8 for such purposes;

9 (10) Make, issue, modify, revoke, and enforce orders prohibiting,
10 controlling, or abating air pollution and requiring the adoption of remedial
11 measures to prevent, control, or abate air pollution;

12 ~~—— (11) Formulate and promulgate, amend, repeal, and enforce rules and~~
13 ~~regulations implementing or effectuating the powers and duties of the~~
14 ~~Commission under this chapter to control air pollution. No rule or regulation~~
15 ~~shall be issued or modified until after a public hearing shall have been held~~
16 ~~pursuant to § 8-4-212;~~

17 ~~—— (12) Adopt, after notice and public hearing, reasonable and~~
18 ~~nondiscriminatory rules and regulations requiring the registration of and the~~
19 ~~filing of reports by persons engaged in operations which may result in air~~
20 ~~pollution;~~

21 ~~—— (13) (11) Institute court proceedings to compel compliance with the~~
22 ~~provisions of this chapter and rules, regulations, and orders issued pursuant~~
23 ~~thereto;~~

24 ~~—— (14) (12) Exercise all of the powers in the control of air pollution as~~
25 ~~are granted to the ~~Commission~~ department for the control of water pollution~~
26 ~~under §§ 8-4-101) 8-4-106 and 8-4-201) 8-4-229;~~

27 (b) The Arkansas Commission on Pollution Control and Ecology shall have
28 the power to:

29 (1) Promulgation of rules and regulations implementing the substantive
30 statutes charged to the department for administration.

31 (A) In promulgation of such rules and regulations, prior to the
32 submittal to public comment and review of any rule, regulation, or change to
33 any rule or regulation that is more stringent than federal requirements, the
34 Commission shall duly consider the economic impact and the environmental
35 benefit of such rule or regulation on the people of the State of Arkansas,
36 including those entities that will be subject to the regulation.

1 (B) The Commission shall promptly initiate rulemaking proceedings to
2 further implement the analysis required under subdivision (b)(1)(A) of this
3 section.

4 (C) The extent of the analysis required under subdivision (b)(1)(A) of
5 this section shall be defined in the Commission's rulemaking required under
6 subdivision (b)(1)(B) of this section. It will include a written report which
7 shall be available for public review along with the proposed rule in the
8 public comment period.

9 (D) Upon completion of the public comment period, the Commission shall
10 compile a rulemaking record or response to comments demonstrating a reasoned
11 evaluation of the relative impact and benefits of the more stringent
12 regulation;

13 (2) Promulgation of rules, regulations, and procedures not otherwise
14 governed by applicable law which the Commission deems necessary to secure
15 public participation in environmental decision-making processes;

16 (3) Promulgation of rules and regulations governing administrative
17 procedures for challenging or contesting department actions;

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

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

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

25 (7) Make recommendations to the director regarding overall policy and
26 administration of the department, provided, however, that the director shall
27 always remain within the plenary authority of the Governor; and

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

29 (9) Adopt, after notice and public hearing, reasonable and
30 nondiscriminatory rules and regulations requiring the registration of and the
31 filing of reports by persons engaged in operations which may result in air
32 pollution;

33 (10)(A) Adopt, after notice and public hearing, reasonable and
34 nondiscriminatory rules and regulations, including requiring a permit or other
35 regulatory authorization from the department, before any equipment causing the
36 issuance of air contaminants may be built, erected, altered, replaced, used,

1 or operated, except in the case of repairs or maintenance of equipment for
2 which a permit has been previously used, and revoke or modify any permit
3 issued under this chapter or deny any permit when it is necessary, in the
4 opinion of the department, to prevent, control, or abate air pollution.

5 (B) A permit shall be issued for the operation or use of any equipment
6 or any facility in existence upon the effective date of any rule or regulation
7 requiring a permit if proper application is made for the permit.

8 (C) No such permit shall be modified or revoked without prior notice and
9 hearing as provided in this subchapter.

10 (D) Any person who is denied a permit by the department or who has such
11 permit revoked or modified shall be afforded an opportunity for a hearing in
12 connection therewith upon written application made within thirty (30) days
13 after service of notice of such denial, revocation, or modification.

14 (E) The operation of any existing equipment or facility for which a
15 proper permit application has been made shall not be interrupted pending final
16 action thereon.

17 (F)(i) An applicant or permit holder who has had a complete application
18 for a permit or for a modification of a permit pending longer than the time
19 specified in the state regulations promulgated pursuant to Title V of the
20 Clean Air Act Amendments of 1990, or any person who participated in the public
21 participation process, and any other person who could obtain judicial review
22 of such actions under state laws, may petition the Commission for relief from
23 department inaction.

24 (ii) The Commission will either deny or grant the petition within
25 forty-five (45) days of its submittal.

26 (iii) For the purposes of judicial review, either a Commission denial or
27 the failure of the department to render a final decision within thirty (30)
28 days after the Commission has granted a petition shall constitute final agency
29 action; and

30 (11)(A) Establish through its rulemaking authority, either alone or in
31 conjunction with the appropriate state or local agencies, a system for the
32 banking and trading of air emissions designed to maintain both the state's
33 attainment status with the national ambient air quality standards mandated by
34 the federal Clean Air Act and the overall air quality of the state.

35 (B) The Commission may consider differential valuation of emission
36 credits as necessary to achieve primary and secondary national ambient air

1 quality standards, and may consider establishing credits for air pollutants
2 other than those designated as criteria air pollutants by the federal
3 Environmental Protection Agency.

4 (C) Any regulation proposed pursuant to this authorization shall be
5 reported to the House and Senate Interim Committees on Public Health, Welfare,
6 and Labor prior to its final promulgation.

7 8-4-312. Factors in exercise of powers.

8 In exercising ~~its~~ their powers and responsibilities under this chapter,
9 the ~~Arkansas Pollution Control and Ecology~~ department and Commission shall
10 take into account and give consideration to the following factors:

11 (1) The quantity and characteristics of air contaminants and the
12 duration of their presence in the atmosphere which may cause air pollution in
13 a particular area of the state;

14 (2) Existing physical conditions and topography;

15 (3) Prevailing wind directions and velocities;

16 (4) Temperatures and temperature-inversion periods, humidity, and other
17 atmospheric conditions;

18 (5) Possible chemical reactions between air contaminants or between such
19 air contaminants and air gases, moisture, or sunlight;

20 (6) The predominant character of development of the area of the state
21 such as residential, highly-developed industrial, commercial, or other
22 characteristics;

23 (7) Availability of air-cleaning devices;

24 (8) Economic feasibility of air-cleaning devices;

25 (9) Effect on normal human health of particular air contaminants;

26 (10) Effect on efficiency of industrial operation resulting from use of
27 air-cleaning devices;

28 (11) The extent of danger to property in the area reasonably to be
29 expected from any particular air contaminant;

30 (12) Interference with reasonable enjoyment of life by persons in the
31 area and conduct of established enterprises which can reasonably be expected
32 from air contaminants;

33 (13) The volume of air contaminants emitted from a particular class of
34 air contamination sources;

35 (14) The economic and industrial development of the state and the social
36 and economic value of the air contamination sources;

1 (15) The maintenance of public enjoyment of the state's natural
2 resources; and

3 (16) Other factors which the department or Commission may find
4 applicable.

5 8-4-313. Variance from regulations.

6 (a)(1) The Arkansas Pollution Control and Ecology Commission may grant
7 specific variances from the particular requirements of any rule, regulation,
8 or general order to such specific persons or class of persons or such specific
9 air contamination source, upon such conditions as it may deem necessary to
10 protect the public health and welfare, if it finds that strict compliance with
11 the rule, regulation, or general order is inappropriate because of conditions
12 beyond the control of the person granted the variance or because of special
13 circumstances which would render strict compliance unreasonable, unduly
14 burdensome, or impractical due to special physical conditions or causes or
15 because strict compliance would result in substantial curtailment or closing
16 down of a business, plant, or operation or because no alternative facility or
17 method of handling is yet available.

18 (2) Variances may be limited in time.

19 (3) In determining whether or not a variance shall be granted, the
20 Commission shall weigh the equities involved and the relative advantages and
21 disadvantages to the residents and the occupation and activity affected.

22 (b)(1) Any person seeking a variance shall do so by filing a petition
23 for a variance with the Director of the Department ~~of Pollution Control and~~
24 ~~Ecology~~.

25 (2)(A) The director shall promptly investigate the petition and make a
26 recommendation to the Commission as to the disposition thereof.

27 (B)(i) If the recommendation is against the granting of the variance, a
28 hearing shall be held thereon after not less than ten (10) days, prior to
29 notice to the petitioner.

30 (ii) If the recommendation of the director is for the granting of a
31 variance, the Commission may do so without a hearing. However, upon the
32 petition of any person aggrieved by the granting of a variance, a public
33 hearing shall be held.

34 (c)(1) A variance granted may be revoked or modified by the Commission
35 after a public hearing held upon not less than ten (10) days' prior notice.

36 (2) The notice shall be served upon all persons, known to the

1 Commission, who will be subjected to greater restrictions if the variance is
2 revoked or modified, who are likely to be affected, or who have filed with the
3 Commission a written request for such notification.

4

5 SECTION 7. Selected provisions of Title 8, Chapter 5, Subchapter 2, are
6 amended to read as follows:

7 "8-5-201. Definitions.

8 As used in this subchapter, unless the context otherwise requires:

9 (1) 'Commission' means the Arkansas Pollution Control and Ecology
10 Commission or its successor;

11 (2) 'Licensing committee' means the committee of operators and
12 technicians hereinafter established to assist and advise the ~~Arkansas~~
13 ~~Pollution Control and Ecology Commission~~ department in the examining and
14 licensing of operators;

15 (3) 'License' means a certificate of competency issued by the ~~Commission~~
16 department to operators who have met the requirements of the licensing
17 program;

18 (4) 'Wastewater treatment plant' means any plant, disposal field,
19 lagoon, pumping station, or other works installed for the purpose of treating,
20 stabilizing, or disposing of sewage, industrial wastes, or other wastes and
21 for the reduction and handling of sludge removed from such wastewater, used or
22 intended for use by the public;

23 (5) 'Operator' means any person who is in responsible charge of the
24 operation of a wastewater treatment plant, in whole or in part, and who,
25 during the performance of his regular duties, exercises individual judgment
26 which directly or indirectly may affect the proper operation of the plant.
27 Operator shall not be deemed to include an official solely exercising general
28 administrative supervision.

29 (6) 'Department' means the Arkansas Department of Pollution Control &
30 Ecology, or its successor.

31 8-5-202. Penalty and injunctions.

32 (a) A violation of any provision of this subchapter, or of any rule or
33 regulation issued pursuant thereto, shall constitute a misdemeanor and upon
34 conviction shall be punishable as such. Each day's continuance of a violation
35 shall constitute a separate offense.

36 (b) Any violation of this subchapter shall be subject to injunction

1 proceedings brought by the ~~Arkansas Pollution Control and Ecology Commission~~
2 department in a court of competent jurisdiction.

3 8-5-203. Unlawful actions.

4 It shall be unlawful for any municipality, governmental subdivision,
5 public or private corporation, or other person to operate a public or private
6 wastewater treatment plant unless the competency of the operator is duly
7 licensed by the ~~Arkansas Pollution Control and Ecology Commission~~ department
8 under the provisions of this subchapter. It shall further be unlawful for any
9 person to perform the duties of an operator of any such plant without being
10 duly licensed under this subchapter.

11 8-5-204. Licensing committee.

12 (a) There is created and established a licensing committee to advise and
13 assist the ~~Arkansas Pollution Control and Ecology Commission~~ and department in
14 the administration of the licensing program, which shall be composed of eight
15 (8) members:

16 (1) Five (5) members, to be appointed by the Commission, of which three
17 (3) members shall be active wastewater treatment plant operators licensed by
18 the ~~Commission~~ department and two (2) members shall be employed by a private
19 corporation or industry located in Arkansas and nominated at large by the
20 corporations or industries for service on the committee;

21 (2) One (1) member, to be appointed by the Commission, shall be an
22 employee of a municipality operating a wastewater treatment plant who holds
23 the position of chief administrative officer, city engineer, director of
24 public utilities, or other equivalent position;

25 (3) One (1) member, to be appointed by the Commission, shall be a
26 faculty member of an accredited college, university, or professional school in
27 the state whose major field is related to water resources or sanitary
28 engineering; and

29 (4) One (1) member shall be the Director of the Department of Pollution
30 Control and Ecology, or a qualified member of his staff, who shall act as
31 executive secretary of the licensing committee.

32 (b)(1) In the event of a vacancy, a new member shall be appointed by the
33 Commission to serve out the unexpired term.

34 (2) No member shall serve more than two (2) consecutive three-year
35 terms.

36 (c)(1) State agency members of the licensing committee shall receive no

1 additional salary or per diem for their services as members of the committee,
2 but they shall be allowed their travel and maintenance expenses while
3 attending meetings away from Little Rock.

4 (2) The members appointed by the Commission shall be allowed ~~twenty-five~~
5 ~~dollars (\$25.00) per day per diem in accordance with law,~~ plus their travel
6 and maintenance expenses while attending meetings.

7 8-5-205. Powers and duties generally.

8 (a) The Arkansas Department of Pollution Control and Ecology,
9 Commission or its successor, shall be charged with the responsibility of
10 administering and enforcing this subchapter, with the advice and assistance of
11 the licensing committee, and is given and charged with the following powers
12 and duties:

13 ~~—— (1) To adopt rules and regulations implementing and effectuating such~~
14 ~~powers and duties of the Commission under this subchapter as may be necessary~~
15 ~~for the administration and enforcement thereof;~~

16 ~~—— (2) (1) To conduct examinations for licensing, which shall be conducted~~
17 ~~at least annually and more frequently as the Commission shall deem necessary;~~

18 ~~—— (3) (2) To issue licenses to qualified wastewater treatment plant~~
19 ~~operators, to renew these licenses, and to suspend or revoke the licenses for~~
20 ~~cause, after due notice and hearing;~~

21 ~~—— (4) (3) To institute court proceedings to compel compliance with the~~
22 ~~provisions of this subchapter and rules and regulations issued pursuant~~
23 ~~thereto; and~~

24 ~~—— (5) (4) To participate financially in programs sponsored by the Arkansas~~
25 ~~Water Environment Association, or its successor, provided that the~~
26 ~~participation shall not exceed the sum of one thousand dollars (\$1,000) per~~
27 ~~fiscal year.~~

28 (b) The Arkansas Pollution Control and Ecology Commission shall serve as
29 the rulemaking and appointment authority for implementation of this
30 subchapter. Its powers shall include:

31 (1) To adopt rules and regulations implementing and effectuating this
32 subchapter as may be necessary for the administration and enforcement thereof;

33 (2) To make appointments to the Licensing Committee in accordance with
34 this subchapter;

35 (3) To set reasonable licensure and examination fees to cover the costs
36 of administration of this subchapter.

1 8-5-206. Classification of treatment plants.

2 (a) The Arkansas Pollution Control and Ecology Commission shall, through
3 regulations, classify all wastewater treatment plants, taking into account the
4 size, type, and complexity of the plant; the character and volume of
5 wastewater treated; the population served; the skill, knowledge, and
6 experience reasonably required to supervise the proper operation of the plant;
7 and such other factors as the Commission shall deem appropriate.

8 (b) The ~~Commission~~ department shall license persons as to their
9 qualifications to supervise successfully the proper operation of plants within
10 classifications based on the recommendations of the licensing committee.

11 8-5-207. Operators to be licensed.

12 In order to safeguard the public health and protect the waters of this
13 state from pollution, all operators in responsible charge of public or private
14 wastewater treatment plants shall be duly licensed and certified as competent
15 by the ~~Arkansas Pollution Control and Ecology Commission~~ department under the
16 provisions of this subchapter and under such rules and regulations as the
17 Commission may adopt, with the advice and assistance of the licensing
18 committee, pursuant to the authority of this subchapter. All rules and
19 regulations promulgated pursuant to this subchapter shall be reviewed by the
20 Joint Interim Committee on Public Health, Welfare, and Labor or an appropriate
21 subcommittee thereof.

22 8-5-208. License requirements.

23 (a) The ~~Arkansas Pollution Control and Ecology Commission~~ department
24 shall license and certify all applicants for licenses under this subchapter
25 who satisfy the requirements of the subchapter and the rules and regulations
26 issued pursuant thereto. Licenses shall be granted according to the
27 classification of wastewater treatment plants established under this
28 subchapter. Licenses shall be valid for a period of one (1) year and shall be
29 renewable upon application without examination.

30 (b) All operators of wastewater treatment plants within the state shall
31 apply to the ~~Commission~~ department for a license. The ~~Commission~~ department
32 shall, without examination, issue appropriate licenses to all holders of
33 certificates of competency heretofore issued under the voluntary licensing
34 program of this state. Those applicants who do not hold voluntary certificates
35 of competency shall, without examination, be granted limited operators'
36 licenses valid only for the plant where then employed.

1 (c) The ~~Commission~~ department, in its discretion, may waive the
2 requirements, or any part of the requirements, for formal examination of an
3 applicant for license if the applicant holds a valid license or certificate
4 from another state in which the requirements for license in the appropriate
5 classification are at least equal to the requirements set forth in this
6 subchapter and the rules and regulations issued pursuant thereto.

7 8-5-209. Fees.

8 (a) The ~~Arkansas Pollution Control and Ecology~~ Commission shall have the
9 authority to set fees in an amount to cover the cost of the administration of
10 this subchapter. These fees shall not exceed twenty-five dollars (\$25.00) for
11 examination, ten dollars (\$10.00) for licensing, and ten dollars (\$10.00) for
12 annual renewal of licenses.

13 (b) ~~All of the fees shall be deposited in a special fund in a bank in~~
14 ~~this state to be designated by the Commission and may be used only for~~
15 ~~administration of this subchapter. The Wastewater Licensing Fund is hereby~~
16 established on the books of the Treasurer of State, Auditor of State, and the
17 Chief Fiscal Officer of the State. All fees collected under the provisions of
18 this section shall be deposited into this fund and may be used only for the
19 administration of this subchapter."

20

21 SECTION 8. Selected provisions of Title 8, Chapter 6, Subchapter 2, are
22 amended to read as follows:

23 "8-6-207. Powers and duties of the department and Commission generally.

24 (a) The Arkansas Department of Pollution Control and Ecology Commission,
25 or its successor, shall have the following powers and duties:

26 (1) To administer and enforce all laws, rules, and regulations relating
27 to solid waste disposal;

28 (2) To advise, consult, and cooperate with appropriate federal, state,
29 interstate, and local units of government and with affected groups and
30 industries in the formulation of plans and the implementation of a solid waste
31 management program pursuant to this subchapter;

32 (3) To accept and administer loans and grants from the federal
33 government and from such other sources as may be available to the Commission
34 for the planning, construction, and operation of solid waste management
35 systems and disposal facilities;

36 (4) To develop a statewide solid waste management plan in cooperation

1 with municipal and county governments and solid waste boards, giving emphasis
2 to regional planning where feasible;
3 ~~—— (5) To adopt, after notice and public hearing, and to promulgate,~~
4 ~~modify, repeal, and enforce rules and regulations for the source reduction,~~
5 ~~minimization, recycling, collection, transportation, processing, storage, and~~
6 ~~disposal of solid wastes including, but not limited to, the disposal site~~
7 ~~location and the construction, operation, and maintenance of the disposal site~~
8 ~~or disposal process as necessary or appropriate to implement or effectuate the~~
9 ~~purposes and intent of this subchapter and the powers and duties of the~~
10 ~~Commission under this subchapter;~~
11 ~~—— (6) (5) To require to be submitted and to approve plans and~~
12 ~~specifications for the construction and operation of solid waste disposal~~
13 ~~facilities and sites and to inspect the construction and operation thereof;~~
14 ~~—— (7) (6) To issue, continue in effect, revoke, modify, or deny, under~~
15 ~~such conditions as it may prescribe, permits for the establishment,~~
16 ~~construction, operation, or maintenance of solid waste management systems,~~
17 ~~disposal sites, and facilities;~~
18 ~~—— (8) (7) To make investigations, inspections, and to hold such hearings,~~
19 ~~after notice, as it may deem necessary or advisable for the discharge of~~
20 ~~duties under this subchapter and to ensure compliance with this subchapter and~~
21 ~~any orders, rules, and regulations issued pursuant thereto;~~
22 ~~—— (9) (8) To make, issue, modify, revoke, and enforce orders, after notice~~
23 ~~and opportunity for adjudicatory review by the Commission—~~hearing,~~ prohibiting~~
24 ~~violation of any of the provisions of this subchapter or of any rules and~~
25 ~~regulations issued pursuant to it, and to require the taking of such remedial~~
26 ~~measures for solid waste disposal as may be necessary or appropriate to~~
27 ~~implement or effectuate the provisions and purposes of this subchapter;~~
28 ~~—— (10) (9) To institute proceedings in the name of the ~~Commission~~~~
29 ~~department in any court of competent jurisdiction to compel compliance with,~~
30 ~~and to restrain any violation of, the provisions of this subchapter or any~~
31 ~~rules, regulations, and orders issued pursuant thereto, and to require the~~
32 ~~taking of such remedial measures for solid waste disposal as may be necessary~~
33 ~~or appropriate to implement or effectuate the provisions and purposes of this~~
34 ~~subchapter;~~
35 ~~—— (11) (10) To initiate, conduct, and support research, demonstration~~
36 ~~projects, and investigations and to coordinate all state agency research~~

1 programs pertaining to solid waste disposal and management systems;
2 ~~—— (12) To establish policies and standards for effective solid waste~~
3 ~~disposal and management systems;~~
4 ~~—— (13) To establish standards and procedures for the certification of~~
5 ~~personnel to operate solid waste disposal systems or any part of a system;~~
6 ~~—— (14) (11) To require the department to make periodic inspections not~~
7 ~~less than quarterly in accordance with regulations promulgated by the~~
8 ~~Commission of all solid waste disposal facilities or sites permitted under~~
9 ~~this subchapter to ensure compliance with all requirements of this subchapter~~
10 ~~and the regulations promulgated under this subchapter and to make final~~
11 ~~inspection of closed or abandoned solid waste disposal sites to determine~~
12 ~~compliance with rules and regulations for proper closure and proper filling~~
13 ~~and drainage of the site;~~
14 ~~—— (15) (12) To issue, continue in effect, revoke, modify, or deny, under~~
15 ~~such conditions as it may prescribe, permits for the establishment,~~
16 ~~construction, operation, or maintenance of transfer stations;~~
17 ~~—— (16) (13) To regulate and license persons engaged in the business of~~
18 ~~transporting used and waste tires;~~
19 ~~—— (17) (14) To establish minimum standards for the operation of a solid~~
20 ~~waste collection system; and~~
21 ~~—— (18) (15) Upon the petition of a solid waste board or upon the~~
22 ~~Commission's its own motion initiative, to revoke, modify, or deny a permit~~
23 ~~for a solid waste disposal facility or a permit for any other element of a~~
24 ~~solid waste management system based on noncompliance with an approved regional~~
25 ~~solid waste management plan of a solid waste board.~~

26 (b) The Arkansas Pollution Control and Ecology Commission shall have the
27 following powers and duties:

28 (1) Promulgation of rules and regulations implementing the substantive
29 statutes charged to the department for administration.

30 (A) In promulgation of such rules and regulations, prior to the
31 submittal to public comment and review of any rule, regulation, or change to
32 any rule or regulation that is more stringent than federal requirements, the
33 Commission shall duly consider the economic impact and the environmental
34 benefit of such rule or regulation on the people of the State of Arkansas,
35 including those entities that will be subject to the regulation.

36 (B) The Commission shall promptly initiate rulemaking proceedings to

1 further implement the analysis required under subdivision (b)(1)(A) of this
2 section.

3 (C) The extent of the analysis required under subdivision (b)(1)(A) of
4 this section shall be defined in the Commission's rulemaking required under
5 subdivision (b)(1)(B) of this section. It will include a written report which
6 shall be available for public review along with the proposed rule in the
7 public comment period.

8 (D) Upon completion of the public comment period, the Commission shall
9 compile a rulemaking record or response to comments demonstrating a reasoned
10 evaluation of the relative impact and benefits of the more stringent
11 regulation;

12 (2) Promulgation of rules, regulations, and procedures not otherwise
13 governed by applicable law which the Commission deems necessary to secure
14 public participation in environmental decision-making processes;

15 (3) Promulgation of rules and regulations governing administrative
16 procedures for challenging or contesting department actions;

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

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

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

24 (7) Make recommendations to the director regarding overall policy and
25 administration of the department, provided, however, that the director shall
26 always remain within the plenary authority of the Governor; and

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

28 (9) To establish policies and standards for effective solid waste
29 disposal and management systems; and

30 (10) To adopt, after notice and public hearing, and to promulgate,
31 modify, repeal, and enforce rules and regulations for the source reduction,
32 minimization, recycling, collection, transportation, processing, storage, and
33 disposal of solid wastes including, but not limited to, the disposal site
34 location and the construction, operation, and maintenance of the disposal site
35 or disposal process as necessary or appropriate to implement or effectuate the
36 purposes and intent of this subchapter and the powers and duties of the

1 Commission under this subchapter."

2

3 SECTION 9. Selected provisions of Title 8, Chapter 7, Subchapter 2, are
4 amended to read as follows:

5 "8-7-203. Definitions.

6 As used in this subchapter, unless the context otherwise requires:

7 (1) 'Department' means the Arkansas Department of Pollution Control and
8 Ecology, or its successor;

9 (2) 'Director' means the Director of the Department of Pollution Control
10 and Ecology, or its successor;

11 (3) 'Commission' means the Arkansas Pollution Control and Ecology
12 Commission;

13 (4) 'Disposal' means the discharge, deposit, injection, dumping,
14 spilling, leaking, or placing of any hazardous waste into or on any land or
15 water in whatever manner so that such hazardous waste, or any constituent
16 thereof, might or might not enter the environment or be emitted into the air,
17 or discharged into any waters including groundwaters;

18 (5) 'Generation' means the act or process of producing waste materials;

19 (6) 'Hazardous waste' means any waste or combination of wastes of a
20 solid, liquid, contained gaseous, or semisolid form which, because of its
21 quantity, concentration, or physical, chemical, or infectious characteristics,
22 may in the judgment of the department:

23 (A) Cause or significantly contribute to an increase in mortality or an
24 increase in serious irreversible or incapacitating reversible illness; or

25 (B) Pose a substantial present or potential hazard to human health or
26 the environment when improperly treated, stored, transported, or disposed of,
27 or otherwise improperly managed. Such wastes include, but are not limited to,
28 those which are radioactive, toxic, corrosive, flammable, irritants, or strong
29 sensitizers or those which generate pressure through decomposition, heat, or
30 other means;

31 (7) 'Hazardous waste management' means the systematic control of the
32 generation, collection, distribution, marketing, source separation, storage,
33 transportation, processing, recovery, disposal, and treatment of hazardous
34 waste;

35 (8) 'Manifest' means the form used for identifying the quantity,
36 composition, and the origin, routing, and destination of hazardous waste

1 during its transport;

2 (9) 'Person' means any individual, corporation, company, firm,
3 partnership, association, trust, joint-stock company, state agency, government
4 instrumentality or agency, institution, county, city, town, or municipal
5 authority or trust, venture, or any other legal entity, however organized;

6 (10) 'Storage' means the containment of hazardous wastes, either on a
7 temporary basis or for a period of years, in such a manner as not to
8 constitute disposal of hazardous wastes. Storage by means of burial shall be
9 deemed to constitute disposal within the meaning of this subchapter;

10 (11) 'Transport' means the movement of wastes from the point of
11 generation to any intermediate points and finally to the point of ultimate
12 storage or disposal;

13 (12) 'Treatment' means any method, technique, or process, including
14 neutralization, designed to change the physical, chemical, or biological
15 character or composition of any hazardous waste so as to neutralize the waste
16 or so as to render the waste less hazardous, safer for transport, amenable to
17 recovery, amenable to storage, amenable to disposal, or reduced in volume;

18 (13) 'Facility' means any land and appurtenances, thereon and thereto,
19 used for the treatment, storage, or disposal of hazardous waste;

20 (14) 'Treatment facility' means a location at which waste is subjected
21 to treatment and may include a facility where waste has been generated; and

22 (15) 'Site' means any real property located within the boundary of the
23 State of Arkansas contemplated or later acquired for the purpose of, but not
24 limited to, landfills or other facilities to be used for treatment, storage,
25 disposal, or generation of hazardous wastes.

26 8-7-209. Powers and duties of the department and Commission generally.

27 (a) The department shall have the following powers and duties:

28 (1) To administer and enforce all laws, rules, and regulations regarding
29 hazardous waste management;

30 (2) To conduct and publish such studies of hazardous waste management in
31 this state as shall be deemed appropriate including, but not limited to:

32 (A) A description of the sources of hazardous waste generated within the
33 state;

34 (B) Information regarding the types and quantities of such waste; and

35 (C) A description of current hazardous waste management practices and
36 costs including treatment, recovery, and disposal;

1 (3) To develop, publish, and implement plans in accordance with the
2 provisions of this subchapter for the safe and effective management of
3 hazardous wastes within this state including, but not limited to:

4 (A) The establishment of criteria for the identification of those
5 locations within the state which are suitable for establishment of hazardous
6 waste treatment or disposal facilities or sites; and

7 (B) Those locations which are not suitable for such purposes;

8 (4) To establish criteria for determination of whether any waste or
9 combination of wastes is hazardous for purposes of this subchapter and to
10 identify and specify wastes or combination of wastes as being hazardous;

11 ~~(5) To adopt, after notice and public hearing, and to promulgate,
12 modify, repeal, and enforce rules and regulations regarding hazardous waste
13 management as may be necessary or appropriate to implement or effectuate the
14 purposes and intent of this subchapter and the powers and duties of the
15 department under it including, but not limited to, rules and regulations for:~~

16 ~~(A) The containerization and labeling of hazardous wastes, which rules,
17 to the extent practicable, shall be consistent with those issued by the United
18 States Department of Transportation, the United States Environmental
19 Protection Agency, and the Arkansas State Highway and Transportation
20 Department;~~

21 ~~(B) Establishing standards and procedures for the safe operation and
22 maintenance of facilities;~~

23 ~~(C) Identifying those wastes or combination of wastes which are
24 incompatible and which may not be stored or disposed of together and
25 procedures for preventing the storage, disposal, recovery, or treatment of
26 incompatible wastes together;~~

27 ~~(D) The reporting of hazardous waste management activities;~~

28 ~~(E) Establishing standards and procedures for the certification of
29 supervisory personnel at hazardous waste treatment or disposal facilities or
30 sites as required under ^A 8-7-219(3); and~~

31 ~~(F) Establishing a manifest system for the transport of hazardous waste
32 and prohibiting the receipt of hazardous waste at storage, processing,
33 recovery, disposal, or transport facilities or sites without a properly
34 completed manifest;~~

35 ~~(6)~~ (5) To issue, continue in effect, revoke, modify, or deny, under
36 such conditions as it may prescribe, permits for the transportation of

1 hazardous waste and the establishment, construction, operation, or maintenance
2 of hazardous waste treatment, storage, or disposal facilities or sites, as
3 more particularly prescribed by §§ 8-7-215 - 8-7-222;

4 ~~_____ (7)~~ (6) To make such investigations and inspections and to hold such
5 hearings, after notice, as it may deem necessary or advisable for the
6 discharge of its duties under this subchapter and to ensure compliance with
7 this subchapter and any orders, rules, and regulations issued pursuant
8 thereto;

9 ~~_____ (8)~~ (7) To make, issue, modify, revoke, and enforce orders, after notice
10 and hearing, prohibiting violation of any of the provisions of this
11 subchapter, or of any rules and regulations issued pursuant thereto or any
12 permit issued thereunder, and requiring the taking of such remedial measures
13 as may be necessary or appropriate to implement or effectuate the provisions
14 and purposes of this subchapter;

15 ~~_____ (9)~~ (8) To institute proceedings in the name of the department in any
16 court of competent jurisdiction to compel compliance with, and to restrain any
17 violation of the provisions of this subchapter, or any rules, regulations, and
18 orders issued pursuant thereto, or any permit issued thereunder; and require
19 the taking of such remedial measures as may be necessary or appropriate to
20 implement or effectuate the provisions and purposes of this subchapter. In any
21 civil action in which a temporary restraining order, preliminary injunction,
22 or permanent injunction is sought, it shall not be necessary to allege or
23 prove at any stage of the proceeding that irreparable damage will occur should
24 the requested relief not be granted, nor that the remedy at law is inadequate;

25 ~~_____ (10)~~ (9) To initiate, conduct, and support research, demonstration
26 projects, and investigations, and coordinate all state agency research
27 programs pertaining to hazardous waste management, and establish technical
28 advisory committees to assist in the development of procedures, standards,
29 criteria, and rules and regulations, the members of which may be reimbursed
30 for travel expenses;

31 ~~_____ (11)~~ (10) To establish policies and standards for effective hazardous
32 waste management; and

33 ~~_____ (12)~~ (11) To establish standards and procedures for the certification of
34 personnel to operate hazardous waste treatment or disposal facilities or any
35 commercial hazardous waste management facilities.

36 ~~_____ (b)~~ (12) In addition to the powers enumerated ~~in subsection (a) of this~~

1 ~~section above~~, the department shall have and may use in the administration and
2 enforcement of this subchapter all of the powers which it has under other laws
3 administered by it, including the Arkansas Water and Air Pollution Control
4 Act, [§] 8-4-101 et seq., and the Arkansas Solid Waste Management Act, [§] 8-6-201
5 et seq.

6 (b) The Arkansas Pollution Control and Ecology Commission shall have the
7 following powers and duties:

8 (1) To adopt, after notice and public hearing, and to promulgate,
9 modify, repeal, and enforce rules and regulations regarding hazardous waste
10 management as may be necessary or appropriate to implement or effectuate the
11 purposes and intent of this subchapter and the powers and duties of the
12 department under it including, but not limited to, rules and regulations for:

13 (A) The containerization and labeling of hazardous wastes, which rules,
14 to the extent practicable, shall be consistent with those issued by the United
15 States Department of Transportation, the United States Environmental
16 Protection Agency, and the Arkansas Transportation Safety Agency;

17 (B) Establishing standards and procedures for the safe operation and
18 maintenance of facilities;

19 (C) Identifying those wastes or combination of wastes which are
20 incompatible and which may not be stored or disposed of together and
21 procedures for preventing the storage, disposal, recovery, or treatment of
22 incompatible wastes together;

23 (D) The reporting of hazardous waste management activities;

24 (E) Establishing standards and procedures for the certification of
25 supervisory personnel at hazardous waste treatment or disposal facilities or
26 sites as required under [§] 8-7-219(3); and

27 (F) Establishing a manifest system for the transport of hazardous waste
28 and prohibiting the receipt of hazardous waste at storage, processing,
29 recovery, disposal, or transport facilities or sites without a properly
30 completed manifest;

31 (2)(A) In promulgation of such rules and regulations, prior to the
32 submittal to public comment and review of any rule, regulation, or change to
33 any rule or regulation that is more stringent than federal requirements, the
34 Commission shall duly consider the economic impact and the environmental
35 benefit of such rule or regulation on the people of the State of Arkansas,
36 including those entities that will be subject to the regulation.

1 (B) The Commission shall promptly initiate rulemaking proceedings to
2 further implement the analysis required under subdivision (b)(1)(A) of this
3 section.

4 (C) The extent of the analysis required under subdivision (b)(1)(A) of
5 this section shall be defined in the Commission's rulemaking required under
6 subdivision (b)(1)(B) of this section. It will include a written report which
7 shall be available for public review along with the proposed rule in the
8 public comment period.

9 (D) Upon completion of the public comment period, the Commission shall
10 compile a rulemaking record or response to comments demonstrating a reasoned
11 evaluation of the relative impact and benefits of the more stringent
12 regulation;

13 (3) Promulgation of rules, regulations, and procedures not otherwise
14 governed by applicable law which the Commission deems necessary to secure
15 public participation in environmental decision-making processes;

16 (4) Promulgation of rules and regulations governing administrative
17 procedures for challenging or contesting department actions;

18 (5) In the case of permitting or grants decisions, providing the right
19 to appeal a permitting or grants decision rendered by the director or his
20 delegatee;

21 (6) In the case of an administrative enforcement or emergency action,
22 providing the right to contest any such action initiated by the director;

23 (7) Instruct the director to prepare such reports or perform such
24 studies as will advance the cause of environmental protection in the state;

25 (8) Make recommendations to the director regarding overall policy and
26 administration of the department, provided, however, that the director shall
27 always remain within the plenary authority of the Governor; and

28 (9) Upon a majority vote, initiate review of any director's decision.

29 8-7-226. Fees - Fund established.

30 (a) The ~~department~~ Commission shall have authority to establish by
31 regulation a schedule of fees to recover the costs of processing permit
32 applications and permit renewal proceedings, on-site inspections and
33 monitoring, the certification of personnel to operate hazardous waste
34 treatment, storage, or disposal facilities, and other activities of department
35 personnel which are reasonably necessary to assure that generators and
36 transporters of hazardous waste and hazardous waste management facilities are

1 complying with the provisions of this subchapter, and which reasonably should
2 be borne by the transporter, generator, or owner or operator of the hazardous
3 waste management facility.

4 (b) All fees collected pursuant to this section shall be dedicated to
5 enabling the department to receive authorization to administer a hazardous
6 waste management program in Arkansas pursuant to the federal Resource
7 Conservation and Recovery Act of 1979, as amended by the Hazardous and Solid
8 Waste Amendments of 1984.

9 (c) The Hazardous Waste Permit Fund is established on the books of the
10 Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State.
11 All fees collected under the provisions of this section shall be deposited in
12 this fund.

13 (d) ~~The Department of Pollution Control and Ecology~~ Commission is hereby
14 authorized to promulgate such rules and regulations necessary to administer
15 the fees, rates, tolls, or charges for services established by this section
16 and is directed to prescribe ~~and collect~~ such fees, rates, tolls, or charges
17 for the services delivered by the Department of Pollution Control and Ecology,
18 or its successor, in such manner as may be necessary to support the programs
19 of the department as directed by the Governor and the General Assembly."
20

21 SECTION 10. This Act shall not be construed as impairing the continued
22 effectiveness of any regulations or orders promulgated or issued by the
23 Arkansas Pollution Control & Ecology Commission prior to the effective date of
24 this Act. Nor shall this Act be construed as extinguishing or otherwise
25 affecting the unexpired terms of any current members of the Arkansas
26 Pollution Control and Ecology Commission.

27
28 SECTION 11. All provisions of this act of a general and permanent
29 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
30 Code Revision Commission shall incorporate the same in the Code.

31
32 SECTION 12. If any provision of this act or the application thereof to
33 any person or circumstance is held invalid, such invalidity shall not affect
34 other provisions or applications of the act which can be given effect without
35 the invalid provision or application, and to this end the provisions of this
36 act are declared to be severable.

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

/s/Rep. Malone, et al

APPROVED:4-08-97