

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senators Yates and Fitch**
5
6

A Bill

SENATE BILL 22

For An Act To Be Entitled

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

Subtitle

14 "TO AMEND VARIOUS LAWS RELATING TO WATER AND AIR
15 POLLUTION."
16

17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

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

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

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

27 *(b) The express purpose of these fees shall be to defray the*
28 *administrative costs of issuance, renewal, inspection, modification, and*
29 *monitoring associated with these permits."*
30

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

32 *"(4) 'Initial fee' means that fee required by this chapter to be*
33 *submitted with all applications for water, air, and solid waste permits*
34 *required by §§ 8-4-101 - 8-4-106, 8-4-201 - 8-4-229, 8-4-301 - 8-4-313, or §§*
35 *8-6-201 - 8-6-217;"*

1

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

3 "(1) Following a public hearing and based upon a record calculating the
4 reasonable administrative costs of evaluating and taking action on permit
5 applications and of implementing and enforcing the terms and conditions of
6 permits and variances, the commission shall establish, by regulation,
7 reasonable fees for initial issuance, annual review, and modification of
8 water, air, or solid waste permits required by §§ 8-4-101 - 8-4-106, 8-4-201 -
9 8-4-229, 8-4-301 - 8-4-313, and 8-6-201 - 8-6-217. These fees shall consist of
10 initial fees, annual review fees, and modification fees, as defined in §
11 8-1-102."

12

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

14 "8-1-106. Definitions - Disclosure statements - Denial of application -
15 Appeal - Regulations.

16 (a) For the purposes of this section:

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

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

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

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

25 (D) Any person who is not now in compliance or has a history of
26 noncompliance with the environmental laws or regulations of this state or any
27 other jurisdiction and who through relationship by affinity or consanguinity
28 or who through any other relationship could be reasonably expected to
29 significantly influence the applicant in a manner which could adversely affect
30 the environment;

31 (2) 'Disclosure statement' means a written statement by the applicant
32 which contains:

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

35 (B) The full name and business address of any legal entity in which the

1 applicant holds a debt or equity interest of at least five percent (5%) or
2 which is a parent company or subsidiary of the applicant, and a description of
3 the on-going organizational relationships as they may impact operations within
4 the state;

5 (C) A description of the experience and credentials of the applicant,
6 including any past or present permits, licenses, certifications, or
7 operational authorizations relating to environmental regulation;

8 (D) A listing and explanation of any civil or criminal legal actions by
9 government agencies involving environmental protection laws or regulations
10 against the applicant and affiliated persons in the ten (10) years immediately
11 preceding the filing of the application, including administrative enforcement
12 actions resulting in the imposition of sanctions, permit or license
13 revocations or denials issued by any state or federal authority, actions that
14 have resulted in a finding or a settlement of a violation, and actions that
15 are pending;

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

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

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

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

33 (2) If the applicant is a publicly held company required to file
34 periodic reports under the Securities and Exchange Act of 1934, or a wholly
35 owned subsidiary of a publicly held company, the applicant shall not be

1 required to submit a disclosure statement, but shall submit the most recent
2 annual and quarterly reports required by the Securities and Exchange
3 Commission, which provide information regarding legal proceedings in which the
4 applicant has been involved. The applicant shall submit such other
5 information as the director may require that relates to the competency,
6 reliability, or responsibility of the applicant and affiliated persons.

7 (c) The director may deny the issuance or transfer of any permit,
8 license, certification, or operational authority if he finds, based upon the
9 disclosure statement and other investigation which he deems appropriate, that:

10 (1) The applicant has a history of noncompliance with the environmental
11 laws or regulations of this state or any other jurisdiction;

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

16 (3) A person with a history of noncompliance with the environmental
17 laws or regulations of this state or any other jurisdiction is affiliated with
18 the applicant to the extent of being capable of significantly influencing the
19 practices or operations of the applicant which could have impact upon the
20 environment.

21 (d) In reaching any decision pursuant to the requirements of this
22 section, the director shall consider:

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

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

29 (3) Any evidence of rehabilitation following past violations or
30 convictions.

31 (e) An applicant for a transfer of a permit shall notify the director
32 at least thirty (30) days in advance of the proposed transfer date of the
33 proposed transfer and submit a 'disclosure statement' as required in this
34 section. The permit is automatically transferred to the new permittee unless
35 the director denies the request to transfer within thirty (30) days of the

1 receipt of the disclosure statement. Only those reasons set out in subsection
2 (c) of this section and the deliberate falsification or omission of the
3 relevant information from the disclosure statement as set out in subsection
4 (b)(1) of this section shall constitute grounds for the denial of a transfer.

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

8 (g) The commission shall adopt regulations necessary to implement this
9 section."

10

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

12 "8-1-201. Legislative intent.

13 The General Assembly recognizes that since 1949, when the precursor of
14 the Pollution Control and Ecology Commission was first created, significant
15 changes have occurred in the responsibilities charged to the state's
16 environmental agency. This subchapter intends to clarify and supersede prior
17 law which does not comport with this delineation of responsibility between the
18 Department of Pollution Control and Ecology and the Pollution Control and
19 Ecology Commission.

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

25

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

27 "8-1-202. Powers of the Director of the Department of Pollution Control
28 and Ecology.

29 (a) The executive head of the Department of Pollution Control and
30 Ecology shall be the Director of the Department of Pollution Control and
31 Ecology, who shall be appointed by the Governor, with the consent of the
32 Senate. The director shall serve at the pleasure of the Governor.

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

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

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

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

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

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

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

21 (5) Providing technical and legal expertise and assistance in the field
22 of environmental protection to other agencies and subdivisions of the state as
23 appropriate;

24 (6) Day-to-day administration of environmental programs delegated to
25 the State of Arkansas by the responsible agencies of the federal government;
26 and

27 (7) Any other power or duty specifically vested with the director or
28 department by the General Assembly."

29

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

31 "8-1-203. Powers and responsibilities of the Pollution Control and
32 Ecology Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (B) The commission may afford the opportunity for oral arguments to

1 all parties of the adjudicatory hearing.

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

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

6 (4) Any party aggrieved by the commission decision may appeal as
7 provided by applicable law."

8

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

10 "8-2-205. Procedure for issuance of rules or regulations, appeals,
11 hearings, etc.

12 (a) The procedure of the Arkansas Pollution Control and Ecology
13 Commission for issuance of any rules and regulations, conduct of hearings,
14 notice, review of actions on certificates, right of appeal, presumptions,
15 finality of actions, and related matters shall be as provided in Part I of the
16 Arkansas Water and Air Pollution Control Act as amended, §§ 8-4-101 - 8-4-106,
17 8-4-201 - 8-4-229, including without limitation §§ 8-4-202, 8-4-210, 8-4-212 -
18 8-4-214, 8-4-218 - 8-4-229.

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

25

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

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

33 (4) 'Pollution' means such contamination or other alteration of the
34 physical, chemical, or biological properties of any waters of the state, or
35 such discharge of any liquid, gaseous, or solid substance in any waters of the

1 state as will, or is likely to, render the waters harmful, detrimental, or
2 injurious to public health, safety, or welfare; to domestic, commercial,
3 industrial, agricultural, recreational, or other legitimate beneficial uses;
4 or to livestock, wild animals, birds, fish, or other aquatic life;"

5

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

7 "8-4-103. Criminal, civil, and administrative penalties.

8 (a) CRIMINAL PENALTIES.

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

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

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

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

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

27 (iii) Purposely or knowingly make any false statement,
28 representation, or certification in any document required to be maintained
29 under this chapter, or falsify, tamper with, or render inaccurate any
30 monitoring device, method or record required to be maintained under this
31 chapter.

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

34 (ii) Notwithstanding any other provisions of Arkansas law, upon
35 conviction that person shall be subject to imprisonment for not more than five

1 (5) years or a fine of not more than fifty thousand dollars (\$50,000), or
2 subject to both such fine and imprisonment. For the purpose of fines only,
3 each day or part of a day during which the violation is continued or repeated
4 shall constitute a separate offense.

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

9 (B) Notwithstanding any other provisions of Arkansas law, upon
10 conviction that person shall be subject to imprisonment for not more than
11 twenty (20) years or a fine of not more than two hundred fifty thousand
12 dollars (\$250,000), or subject to both such fine and imprisonment. For the
13 purpose of fines only, each day or part of a day during which the violation is
14 continued or repeated shall constitute a separate offense.

15 (4) Notwithstanding the limits on fines set in subdivisions (1)-(3)
16 above, if a person convicted under any of the above subdivisions has derived
17 or will derive pecuniary gains from commission of the offenses, then he may be
18 sentenced to pay a fine not to exceed twice the amount of the pecuniary gain.

19 (b) CIVIL PENALTIES. The department is authorized to institute a civil
20 action in any court of competent jurisdiction to accomplish any or all of the
21 following:

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

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

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

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

35 (5) Recover civil penalties assessed pursuant to subsection (c)

1 of this section.

2 (c) Any person who violates any provision of this subchapter and
3 regulations, rules, permits, or plans issued pursuant thereto may be assessed
4 an administrative civil penalty not to exceed ten thousand dollars (\$10,000)
5 per violation. Each day of a continuing violation may be deemed a separate
6 violation for purposes of penalty assessment. No civil penalty may be assessed
7 until the person charged with the violation has been given the opportunity for
8 a hearing in accordance with regulations adopted by the commission. All
9 hearings and appeals arising under this subchapter shall be conducted in
10 accordance with the procedures prescribed by §§ 8-4-205, 8-4-212, and 8-4-218
11 - 8-4-229. These administrative procedures may also be used to recover all
12 costs, expenses, and damages to the department and any other agency or
13 subdivision of the state in enforcing or effectuating the provisions of this
14 subchapter, including but not limited to natural resource damages.

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

21 (2) Notice of any administrative enforcement order shall contain the
22 following:

23 (A) the identity of the person or facility alleged to be in
24 violation;

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

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

28 (D) the type of administrative action proposed (i.e. consent
29 order, notice of violation, emergency order);

30 (E) the amount of penalty to be assessed.

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

35 (4) If no hearing is held on the proposed order, any person who

1 commented on the proposed order may petition, within thirty (30) days of the
2 effective date of the order, the commission to set aside such order and to
3 provide a hearing. If the evidence presented by the petitioner is material
4 and was not considered in the issuance of the order, and the commission finds
5 in light of the new evidence that the order is not reasonable and appropriate,
6 it may set aside such order and provide a hearing. If the commission denies a
7 hearing under this subdivision, it shall provide to the petitioner notice of
8 and its reasons for such denial. The denial of such a hearing may be appealed
9 pursuant to §8-4-222.

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

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

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

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

28 (3) All moneys collected which represent the costs, expenses, or
29 damages of another agency or subdivision of the state shall be distributed to
30 the appropriate governmental entity.

31 (g)(1) Any governmental entity permitted to operate a Publicly Owned
32 Treatment Works (POTW) shall have the authority, pursuant to duly promulgated
33 ordinances or regulations, to collect in a court of competent jurisdiction
34 civil or criminal penalties in an amount not to exceed one thousand dollars
35 (\$1,000) for each violation by industrial users of pretreatment standards or

1 requirements.

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

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

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

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

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

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

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

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

31 (j) In cases considering suspension of sentence or probation, efforts
32 or commitments by the defendant to remediate any adverse environmental effects
33 caused by his activities may be considered by the court to be restitution as
34 contemplated by § 5-4-301.

35 (k) A business organization, its agents or officers, may be found

1 liable under this section in accordance with the standards set forth in §
2 5-2-501 et seq., and sentenced to pay fines in accordance with the provisions
3 of § 5-4-201(d) and (e)."

4

5 SECTION 11. Arkansas Code 8-4-201 is amended to read as follows:

6 "8-4-201. Powers and duties of commission generally.

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

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

11 (2) Investigations and Surveys.

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

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

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

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

22 (4) Program. To prepare a comprehensive program for the elimination or
23 reduction of the pollution of the waters of this state;

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

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

31

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

33 "8-4-202. Rules and regulations.

34 (a) The Arkansas Pollution Control and Ecology Commission is given and
35 charged with the power and duty to adopt, modify, or repeal, after notice and

1 public hearings, rules and regulations implementing or effectuating the powers
2 and duties of the department and the commission under this chapter.

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

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

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

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

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

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

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

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

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

5 (2) All interested parties shall be afforded a reasonable opportunity
6 to submit written data, information, views, opinions, and arguments and to
7 make 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, electronic media received by the
10 commission shall be preserved and, along with a record of all oral comments
11 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 subsection (d)(1), the commission shall
18 provide another adequate public notice. This subsection shall not, however,
19 require a second public notice if the final regulation is a logical outgrowth
20 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) A copy of all notices described in subdivision (d) of this section,
24 and a concise general statement of the basis and purpose of the proposed rule,
25 which shall include a written explanation of the necessity of the regulation
26 and a demonstration that any technical regulation or technical standard is
27 based on generally accepted scientific knowledge and engineering practices.
28 For any standard or regulation that is identical to a regulation promulgated
29 by the United States Environmental Protection Agency, this portion of the
30 record may be satisfied by reference to the Code of Federal Regulations. In
31 all other cases the department must provide its own justification with
32 appropriate references to the scientific and engineering literature or written
33 studies conducted by the department.

34 (B) Copies of all written material, photographs, published materials,
35 electronic media, and the record of all oral comments received by the

1 commission during the public comment period and hearings.

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

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

15 (e) If the commission determines that imminent peril to the public
16 health, safety, or welfare requires immediate change in the rules, or
17 immediate suspension, or moratorium on categories or types of permits, it may,
18 after documenting the facts and reasons, declare an emergency and implement
19 emergency rules, regulations, suspensions, or moratoriums. No rule,
20 regulation, suspension, or moratorium adopted under an emergency declaration
21 shall be effective for longer than ninety (90) days. The imminent loss of
22 federal funding, certification or authorization for any program administered
23 by the department shall establish a prima facie case of imminent peril to the
24 public health, safety or welfare."

25

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

27 "8-4-203. Permits generally.

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

35 (b) (1) When any application is filed with the department for the

1 issuance of a new permit, the department shall cause notice of the application
2 to be published in a newspaper of general circulation in the county in which
3 the proposed facility is to be located.

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

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

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

15 (c) Whenever the department proposes to grant or deny any permit
16 application, it shall cause notice of its proposed action to be published in a
17 newspaper of general circulation in the county in which the facility that is
18 the subject of the application is located. The notice shall afford any
19 interested party thirty (30) calendar days in which to submit comments on the
20 proposed permit action. Not less than fifteen (15) days after the conclusion
21 of the public comment period, the department shall announce in writing its
22 final decision regarding the permit application. The department's final
23 decision shall include a response to each issue raised in any public comments
24 received during the public comment period. In the case of any discharge
25 limit, emission limit, environmental standard, analytical method or monitoring
26 requirements the record of the proposed action and the response shall include
27 a written explanation of the rationale for the proposal, demonstrating that
28 any technical requirements or standards are based upon generally accepted
29 scientific knowledge and engineering practices. For any standard or
30 requirement that is identical to a duly promulgated and applicable regulation,
31 this demonstration may be satisfied by reference to the regulation. In all
32 other cases the department must provide its own justification with appropriate
33 reference to the scientific and engineering literature or written studies
34 conducted by the department.

35 (d) All costs of publications of notice under this section shall be

1 paid by the applicant for the permit.

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

5

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

7 "8-4-204 Permits - Revocation

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

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

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

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

18

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

20 "8-4-205 Permits - Hearings upon denial, revocation, or modification
21 and other permit actions.

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

28 (b) (1) Only those interested person, other than the applicant, who have
29 submitted comments on the record regarding a proposed permit action during the
30 public comment period shall have standing to request a hearing by the
31 commission in connection therewith, upon written application made within
32 thirty (30) days after the date of the department_s final decision regarding
33 the permit action.

34 (2) No interested party requesting a hearing under this subsection may
35 raise any issue in the hearing that was not raised in the public comments

1 unless the party raising the issue shows good cause why such issue could not,
2 with reasonable diligence, have been discovered and presented during the
3 public comment period. The limitation in this subsection shall not restrict
4 the issues that may be addressed by the applicant in any appeal.

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

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

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

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

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

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

32 (6) During the pendency of the appeal to the commission:

33 (A) The denial of a permit shall stand,

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

1 (C) Notwithstanding (A) and (B), upon application by any party,
2 the commission may provide for a stay, modify the terms of a stay, or
3 terminate a stay under appropriate circumstances to avoid substantial
4 prejudice to any party.

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

9

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

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

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

16 (ii) The department shall deny any claim for confidentiality for the
17 name and address of any permit applicant or permittee or for any NPDES permit
18 applications, NPDES permits, and effluent data.

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

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

26

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

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

35

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

2 "8-4-213. Conclusiveness of commission actions.

3 (a) If no appeal is taken from an order, rule, regulation, or other
4 decision of the Arkansas Pollution Control and Ecology Commission as provided
5 in A.C.A. § 8-4-222 - 8-4-229, or if the action of the commission is affirmed
6 on appeal, then the action of the commission in the matter shall be deemed
7 conclusive, and the validity and reasonableness thereof shall not be
8 questioned in any other action or proceeding.

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

11

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

13 "8-4-221. Violations of chapter, orders, rules, etc. - Hearing -
14 Orders.

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

23

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

25 "8-4-222. An appeal may be taken from any final order, rule, regulation
26 or other final determination of the commission by those parties who have
27 standing and have exhausted their administrative appeals to the circuit court
28 of the county in which the business, industry, municipality, or thing involved
29 is situated, in the manner provided in §§8-4-223 - 8-4-229."

30

31 SECTION 21. All provisions of this act of a general and permanent
32 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
33 Code Revision Commission shall incorporate the same in the Code.

34

35 SECTION 22. If any provision of this act or the application thereof to

1 any person or circumstance is held invalid, such invalidity shall not affect
2 other provisions or applications of the act which can be given effect without
3 the invalid provision or application, and to this end the provisions of this
4 act are declared to be severable.

5

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

8

/s/Senators Yates

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23