

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

A Bill

SENATE BILL 115

4
5 By: Senator Glover
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For An Act To Be Entitled

9 AN ACT TO REQUIRE LOCAL APPROVAL BEFORE ISSUING A
10 PERMIT TO DISPOSE OF DRILLING WASTES; TO REQUIRE
11 NOTICE OF AN APPLICATION FOR A DISPOSAL PERMIT;
12 TO ALLOW LOCAL GOVERNING AUTHORITIES TO APPEAL A
13 DISPOSAL PERMIT; TO ADOPT RULES FOR THE DISPOSAL
14 OF DRILLING WASTES; AND FOR OTHER PURPOSES.

Subtitle

15
16 TO REQUIRE LOCAL APPROVAL BEFORE ISSUING
17 A DISPOSAL PERMIT; TO REQUIRE NOTICE OF
18 AN APPLICATION FOR A DISPOSAL PERMIT; TO
19 ALLOW LOCAL GOVERNING AUTHORITIES TO
20 APPEAL A DISPOSAL PERMIT; TO ADOPT RULES
21 FOR DISPOSAL OF DRILLING WASTES.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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27 SECTION 1. Arkansas Code § 8-1-203(b), concerning commission rule
28 making, is amended to add an additional subdivision to read as follows:

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

30 (1)(A)(i) Promulgation of rules and regulations implementing the
31 substantive statutes charged to the Arkansas Department of Environmental
32 Quality for administration.

33 (ii) No later than January 1, 2010, the commission
34 shall adopt rules that provide standards for the proper disposal of drilling
35 fluids, produced waters, or other wastes associated with the exploration,
36 development, or production of crude oil, natural gas, or geothermal energy.



1 SECTION 2. Arkansas Code § 8-4-203 is amended to read as follows:
 2 8-4-203. Permits generally.

3 (a)(1) The Arkansas Department of Environmental Quality or its
 4 successor is given and charged with the power and duty to issue, continue in
 5 effect, revoke, modify, or deny permits, under such conditions as it may
 6 prescribe:

7 ~~(1)~~(A) To prevent, control, or abate pollution;

8 ~~(2)~~(B) For the discharge of sewage, industrial waste, or
 9 other wastes into the waters of the state, including the disposal of
 10 pollutants into wells; and

11 ~~(3)~~(C) For the installation, modification, or operation of
 12 disposal systems or any part of them.

13 (2)(A) However, before the department may issue, continue, or
 14 modify a permit for the disposal of drilling fluids, produced waters, or
 15 other wastes associated with the exploration, development, or production of
 16 crude oil, natural gas, or geothermal energy, the applicant for a disposal
 17 permit shall obtain the approval of the governing body of the:

18 (i) Municipality in which the disposal site is to be
 19 located or is located; or

20 (ii) County in which the disposal site is to be
 21 located or is located if the disposal site is not to be located or is not
 22 located within a municipality.

23 (B) The municipality or the county may withhold its
 24 approval if it determines that the activities associated with the disposal
 25 site:

26 (i) Have interfered or will unduly interfere with
 27 the use of a public road or access to a public facility, a business, or a
 28 residence;

29 (ii) Have endangered or will endanger a member of
 30 the public;

31 (iii) Have caused undue damage or will cause undue
 32 damage to a road maintained by the governing body;

33 (iv) Have created or will create a public nuisance;

34 or

35 (v) Have harmed or will harm the general welfare.

36 (b)(1)(A)(i) The department shall not issue, modify, or renew a

1 National Pollutant Discharge Elimination System permit or state permit for a
 2 nonmunicipal domestic sewage treatment system serving two (2) or more
 3 individually owned, rented, or temporarily occupied lots or dwellings, and
 4 using known technology, without the permit applicant first demonstrating to
 5 the department its financial ability to cover the estimated costs of
 6 operating and maintaining the sewage treatment system for a minimum period of
 7 five (5) years.

8 (ii) Each permit application for a nonmunicipal
 9 domestic sewage treatment system serving two (2) or more lots or dwellings
 10 and using known technology shall be accompanied by a cost estimate for a
 11 third party to operate and maintain the nonmunicipal domestic sewage
 12 treatment works on an annual basis for a period of five (5) years.

13 (B)(i) The department shall not issue, modify, or renew a
 14 National Pollutant Discharge Elimination System permit or a state permit for
 15 a nonmunicipal domestic sewage treatment system serving two (2) or more
 16 individually owned, rented, or temporarily occupied lots or dwellings, and
 17 using new technology that has not been previously reviewed and approved by
 18 the department, without the permit applicant first demonstrating to the
 19 department its financial ability to replace the nonmunicipal domestic sewage
 20 treatment system using new technology with one using known technology
 21 acceptable to the department.

22 (ii) Each permit application for a nonmunicipal
 23 domestic sewage treatment system serving two (2) or more lots or dwellings
 24 and using new technology shall be accompanied by a reasonable cost estimate
 25 to replace the nonmunicipal domestic treatment sewage system using new
 26 technology with a nonmunicipal domestic treatment sewage system using known
 27 technology.

28 (2) This minimum financial assurance may be demonstrated to the
 29 department:

- 30 (A) By obtaining insurance;
- 31 (B) By obtaining a letter of credit;
- 32 (C) By obtaining a surety bond;
- 33 (D) By obtaining a trust fund or an escrow account; or
- 34 (E) Through the use of a combination of insurance, letter
 35 of credit, surety bond, trust fund, or escrow account.

36 (3)(A) The department shall have the discretion to set the

1 minimum amount of financial assurance required for each permit under this
2 subsection.

3 (B) This minimum amount of financial assurance may exceed
4 the cost estimates submitted with the permit application.

5 (4) Any financial instrument required by this section shall be
6 posted to the benefit of the department and shall remain in effect for the
7 life of the permit.

8 (5) It is explicitly understood that the department shall not
9 directly operate and shall not be responsible for the operation of any
10 nonmunicipal domestic sewage treatment system.

11 (c)(1)(A) When any application for the issuance of a new permit or a
12 major modification of an existing permit is filed with the department, the
13 department shall cause notice of the application to be published in a
14 newspaper of general circulation in the county in which the ~~proposed~~ facility
15 is located or is to be located.

16 ~~(2)(B)~~ The notice required by subdivision (c)(1) of this
17 section shall advise that any interested person may request a public hearing
18 on the permit application by giving the department a written request within
19 ten (10) days of the publication of the notice.

20 ~~(3)(C)~~ Should a hearing be deemed necessary by the
21 department or in the event the department desires such a hearing, the
22 department shall schedule a public hearing and shall notify by first class
23 mail the applicant and all persons that have submitted comments of the date,
24 time, and place of the public hearing.

25 (2) In addition to the notice required by subdivision (c)(1) of
26 this section, the department shall notify by first class mail the
27 municipality, if any, and the county where the disposal site is located or is
28 to be located.

29 (d)(1)(A) Whenever the department proposes to grant or deny any permit
30 application, it shall cause notice of its proposed action to be published in
31 either:

32 (i) A newspaper of general circulation in the county
33 in which the facility that is the subject of the application is located; or

34 (ii) In the case of a statewide permit, in a
35 newspaper of general circulation in the state.

36 (B) The notice shall afford any interested party thirty

1 (30) calendar days in which to submit comments on the proposed permit action.

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

5 (2) In addition to the notice required by subdivision (d)(1) of
6 this section, the department shall notify by first class mail the
7 municipality, if any, and the county where the disposal site is located or is
8 to be located.

9 ~~(2)(3)~~(A)(i) The department's final decision shall include a
10 response to each issue raised in any public comments received during the
11 public comment period. Such response shall manifest reasoned consideration of
12 the issues raised by the public comments and shall be supported by
13 appropriate legal, scientific, or practical reasons for accepting or
14 rejecting the substance of the comment in the department's permitting
15 decision.

16 (ii) For the purposes of this section, response to
17 comments by the department should serve the roles of both developing the
18 record for possible judicial review of an individual permitting action and as
19 a record for the public's review of the department's technical and legal
20 interpretations on long-range regulatory issues.

21 (iii) Nothing in this section, however, shall be
22 construed as limiting the department's authority to raise all relevant issues
23 of regulatory concern upon adjudicatory review of the commission of a
24 particular permitting action.

25 (B)(i) In the case of any discharge limit, emission limit,
26 environmental standard, analytical method, or monitoring requirements, the
27 record of the proposed action and the response shall include a written
28 explanation of the rationale for the proposal, demonstrating that any
29 technical requirements or standards are based upon generally accepted
30 scientific knowledge and engineering practices.

31 (ii) For any standard or requirement that is
32 identical to a duly promulgated and applicable regulation, this demonstration
33 may be satisfied by reference to the regulation. In all other cases, the
34 department must provide its own justification with appropriate reference to
35 the scientific and engineering literature or written studies conducted by the
36 department.

1 (e)(1) All costs of publication of notices of applications and notices
2 of proposals to grant permits under this section shall be the responsibility
3 of the applicant.

4 (2) All costs of publication of notices of proposals to deny a
5 permit under this section shall be the responsibility of the department.

6 (3) Any moneys received pursuant to subsection (e) of this
7 section shall be classified as refunds to expenditures.

8 (f) Except for the municipality or the county in which the disposal
9 site is located or may be located, only ~~Only~~ those persons that submit
10 comments on the record during the public comment period and the applicant
11 shall have standing to appeal the decision of the department to the Arkansas
12 Pollution Control and Ecology Commission.

13 (g)(1) Permits for the discharge of pollutants into the waters of the
14 state or for the prevention of pollution of the waters of the state shall
15 remain freely transferable, provided the applicant for the transfer notifies
16 the Director of the Arkansas Department of Environmental Quality at least
17 thirty (30) days in advance of the proposed transfer date and submits a
18 disclosure statement as required by § 8-1-106.

19 (2) Only those reasons set out in §§ 8-1-106(b)(1) and 8-1-
20 106(c) shall constitute grounds for denial of a transfer.

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

24 (h) In the event of voluminous comments, including, but not limited to
25 a petition, the department may require the designation of a representative to
26 accept any notices required by this section.

27 (i) The notice provisions of subsections (c) and (d) of this section
28 shall not apply to permit transfers or minor modifications of existing
29 permits.

30 (j) This section in no way restricts local and county government
31 entities from enacting more stringent ordinances regulating nonmunicipal
32 domestic treatment sewage systems in Arkansas.

33 (k) The commission may promulgate rules to establish a permit-by-
34 rule. A permit-by-rule is subject to the public notice requirements and
35 procedural provisions under § 8-4-202 et seq., but is not subject to the
36 public notice requirements and procedural provisions under §§ 8-4-203 – 8-4-

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