

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

HOUSE BILL 1215

5 By: Representative A. Davis  
6 By: Senator Hester  
7

## For An Act To Be Entitled

9 AN ACT TO CREATE THE TRANSFORMATION AND EFFICIENCIES  
10 ACT OF 2019; TO ESTABLISH CABINET-LEVEL DEPARTMENTS;  
11 TO ESTABLISH THE CABINET-LEVEL DEPARTMENT OF ENERGY  
12 AND ENVIRONMENT; TO TRANSFER STATE ENTITIES; TO  
13 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.  
14

## Subtitle

15  
16  
17 AN ACT TO CREATE THE TRANSFORMATION AND  
18 EFFICIENCIES ACT OF 2019; TO ESTABLISH  
19 CABINET-LEVEL DEPARTMENTS; TO ESTABLISH  
20 THE CABINET-LEVEL DEPARTMENT OF ENERGY  
21 AND ENVIRONMENT; TO TRANSFER STATE  
22 ENTITIES; AND TO DECLARE AN EMERGENCY.  
23  
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
26

27 SECTION 1. Arkansas Code Title 25, Chapter 43, is amended to add an  
28 additional subchapter to read as follows:

29 Subchapter 6 – Department of Energy and Environment

30  
31 25-43-601. Department of Energy and Environment.

32 There is created the Department of Energy and Environment as a cabinet-  
33 level department.  
34

35 25-43-602. State entities transferred to the Department of Energy and  
36 Environment.



1           (a) The administrative functions of the following state entities are  
2 transferred to the Department of Energy and Environment pursuant to a cabinet  
3 level transfer:

4           (1) The Advisory Committee on Petroleum Storage Tanks, created  
5 under § 8-7-904;

6           (2) The Division of Environmental Quality, created under § 25-  
7 43-604;

8           (3) The Arkansas Geological Survey, created under § 15-55-201;

9           (4) The Arkansas Pollution Control and Ecology Commission,  
10 created under § 8-4-104;

11           (5) The Arkansas Public Service Commission, created under § 23-  
12 2-101;

13           (6) The Liquefied Petroleum Gas Board, created under § 15-75-  
14 201;

15           (7) The Nutrient Water Quality Trading Advisory Panel, created  
16 under § 8-4-233; and

17           (8) The Oil and Gas Commission, created under § 15-71-101.

18           (b) Each entity transferred shall retain its specified statutory  
19 duties.

20  
21           25-43-603. Secretary of the Department of Energy and Environment.

22           (a) The Secretary of the Department of Energy and Environment is the  
23 executive head of the Department of Energy and Environment.

24           (b) The secretary shall be appointed by the Governor, unless otherwise  
25 specified by law.

26           (c) The secretary shall serve at the pleasure of the Governor.

27           (d) The secretary may:

28           (1) Delegate to the employees of the department, or any state  
29 entity transferred to the department under § 25-43-602, any of the powers or  
30 duties of the department required to administer the department;

31           (2) Hire department personnel;

32           (3) Perform or assign duties assigned to the department; and

33           (4) Serve as the director, or the administrative or executive  
34 head, of any state entity under the administrative control of the department,  
35 if the secretary meets all statutory requirements for the position.

36

1       25-43-604. Division of Environmental Quality.

2       (a) There is created the Division of Environmental Quality.

3       (b) The Division of Environmental Quality shall consist of the  
4 divisions transferred from the Arkansas Pollution Control and Ecology  
5 Commission as of July 1, 1971, and all other divisions, programs, and offices  
6 under the Arkansas Department of Environmental Quality as of June 30, 2019.

7       (c) All other departments, divisions, agencies, and commissions within  
8 this state shall cooperate with the Division of Environmental Quality in  
9 fulfilling the Division of Environmental Quality's responsibility defined in  
10 this chapter.

11       (d) All personnel of the Division of Environmental Quality shall be  
12 employed by Department of Energy and Environment and serve at the pleasure of  
13 the Secretary of the Department of Energy and Environment. This subsection  
14 does not reduce any right which an employee in the Division of Environmental  
15 Quality shall have under any civil service or merit system.

16  
17       25-43-605. Director of the Division of Environmental Quality.

18       (a)(1) The executive head of the Division of Environmental Quality  
19 shall be the Director of the Division of Environmental Quality.

20       (2) The director shall be appointed by the Governor with the  
21 advice and consent of the Senate, and shall serve at the pleasure of the  
22 Governor.

23       (3) The director shall report to the Secretary of the Department  
24 of Energy and Environment.

25       (b) The director, with the advice and consent of the secretary, may  
26 organize the Division of Environmental Quality into divisions, offices, or  
27 units which may be necessary to effectively and efficiently administer the  
28 statutory responsibilities of the Division of Environmental Quality.

29       (c) The director, with the advice and consent of the secretary, shall  
30 appoint the heads of the respective divisions, offices, or units of the  
31 Division of Environmental Quality.

32       (d) Each division, office, or unit of the Division of Environmental  
33 Quality shall be under the direction, control, and supervision of the  
34 director. The director may delegate his or her functions, powers, and duties  
35 to various divisions, offices, or units of the Division of Environmental  
36 Quality as he or she shall deem desirable and necessary for the effective and

1 efficient operation of the Division of Environmental Quality.

2 (e)(1) The director shall be the executive officer and active  
 3 administrator of all pollution control activities.

4 (2) All of the powers of the Arkansas Pollution Control and  
 5 Ecology Commission under §§ 8-4-201(b)(5), 8-4-203, and 8-4-204 relating to  
 6 plans and specifications for disposal systems and permits for the discharge  
 7 of sewage, industrial wastes, or other wastes into the waters of the state  
 8 are vested in the director.

9  
 10 SECTION 2. Arkansas Code § 2-15-404(b)(6)(A), concerning the State  
 11 Plant Board research program, is amended to read as follows:

12 (A) Coordinate with the Arkansas Energy Office of the  
 13 ~~Arkansas Department~~ Division of Environmental Quality to study the use of  
 14 industrial hemp in new energy technologies, including without limitation:

15 (i) Evaluation of the use of industrial hemp to  
 16 generate electricity, and to produce biofuels and other forms of energy  
 17 resources;

18 (ii) Growth of industrial hemp on reclaimed mine  
 19 sites;

20 (iii) Use of hemp seed oil in the production of  
 21 fuels; and

22 (iv) Assessment of the production costs,  
 23 environmental issues, and costs and benefits involved with the use of  
 24 industrial hemp for energy; and

25  
 26 SECTION 3. Arkansas Code § 2-15-404(b)(8), concerning the State Plant  
 27 Board research program, is amended to read as follows:

28 (8) The board shall notify the ~~Department~~ Division of Arkansas  
 29 State Police and each local law enforcement agency with jurisdiction of the  
 30 duration, size, and location of all industrial hemp demonstration plots.

31  
 32 SECTION 4. Arkansas Code § 2-15-404(b)(10), concerning the State Plant  
 33 Board research program, is amended to read as follows:

34 (10) By December 31, 2018, and annually thereafter, the board  
 35 shall report on the status and progress of the industrial hemp research  
 36 program to the Governor and to the ~~Arkansas Agriculture~~ Department of of

1 Agriculture.

2  
3 SECTION 5. Arkansas Code § 2-40-406 is amended to read as follows:

4 2-40-406. ~~Arkansas Department~~ Division of Environmental Quality -  
5 Jurisdiction unimpaired.

6 This subchapter shall not be interpreted as denying or preempting the  
7 regulatory or enforcement jurisdiction of the ~~Arkansas Department~~ Division of  
8 Environmental Quality.

9  
10 SECTION 6. Arkansas Code § 2-40-1302(a)(2), concerning disposal of  
11 large animal carcasses, is amended to read as follows:

12 (2) However, no large animal carcass shall be buried or  
13 otherwise disposed of in any landfill operated under a permit issued by the  
14 ~~Arkansas Department~~ Division of Environmental Quality.

15  
16 SECTION 7. Arkansas Code § 8-1-101(a), concerning purpose of the  
17 Arkansas Pollution Control and Ecology Commission, is amended to read as  
18 follows:

19 (a) It is the purpose of this chapter to authorize the Arkansas  
20 Pollution Control and Ecology Commission to establish a system of fees for  
21 the issuance of permits required by §§ 8-4-101 - 8-4-106, 8-4-201 - 8-4-229,  
22 8-4-301 - 8-4-314, 8-6-201 - 8-6-212, 8-6-213 [repealed], 8-6-214, 8-6-215 -  
23 8-6-217 [superseded], and 8-9-403, to defray costs of other services provided  
24 and to authorize the ~~Arkansas Department~~ Division of Environmental Quality to  
25 collect and enforce these fees.

26  
27 SECTION 8. Arkansas Code § 8-1-102(3) and (4), concerning the  
28 definitions of "department" and "director" regarding the Arkansas Pollution  
29 Control and Ecology Commission, are repealed.

30 ~~(3) "Department" means the Arkansas Department of Environmental~~  
31 ~~Quality;~~

32 ~~(4) "Director" means the executive head and active administrator~~  
33 ~~of the Arkansas Department of Environmental Quality;~~

34  
35 SECTION 9. The introductory language of Arkansas Code § 8-1-103,  
36 concerning the powers and duties of the Arkansas Department of Environmental

1 Quality and the Arkansas Pollution Control and Ecology Commission, is amended  
2 to read as follows:

3 The ~~Arkansas Department~~ Division of Environmental Quality and the  
4 Arkansas Pollution Control and Ecology Commission shall have the following  
5 powers and duties, respectively:  
6

7 SECTION 10. Arkansas Code § 8-1-103(1)(B)(ii), concerning the powers  
8 and duties of the Arkansas Department of Environmental Quality and the  
9 Arkansas Pollution Control and Ecology Commission, is amended to read as  
10 follows:

11 (ii) Should the amount of permit fees levied on and  
12 received from permits existing prior to June 30, 1995, exceed the amounts  
13 specified in subdivision (1)(B)(i) of this section in a fiscal year, the  
14 overcollections may be retained by the ~~department~~ division to be used to  
15 reduce permit fees in subsequent years by relative amounts.  
16

17 SECTION 11. Arkansas Code § 8-1-103(2)(D), concerning the powers and  
18 duties of the Arkansas Department of Environmental Quality and the Arkansas  
19 Pollution Control and Ecology Commission, is amended to read as follows:

20 (D) Notwithstanding other provisions of this subchapter  
21 and other applicable laws, the commission is authorized to promulgate and the  
22 ~~department~~ division is authorized to collect annual fees from facilities  
23 electing to operate under the terms and conditions of a pollution prevention  
24 plan in lieu of an air permit. The annual pollution prevention plan fee shall  
25 be equal to the fee otherwise applicable to facilities operating under an air  
26 permit;  
27

28 SECTION 12. Arkansas Code § 8-1-103(3)-(5), concerning the powers and  
29 duties of the Arkansas Department of Environmental Quality and the Arkansas  
30 Pollution Control and Ecology Commission, are amended to read as follows:

31 (3) The ~~department~~ division shall collect the permit fees as  
32 established by the commission and shall deny the issuance of an initial  
33 permit, a renewal permit, or a modification permit if and when any facility  
34 subject to control by the ~~department~~ division fails or refuses to pay the  
35 fees after reasonable notice as established by the regulations promulgated  
36 under this chapter;

1           (4) The ~~department~~ division shall require that any fee defined  
2 in this chapter shall be paid prior to the issuance of any permit; and

3           (5) The ~~department~~ division is hereby authorized to promulgate  
4 such rules and regulations necessary to administer the fees, rates, tolls, or  
5 charges for services established by this section and is directed to prescribe  
6 and collect such fees, rates, tolls, or charges for the services delivered by  
7 the ~~department~~ division in such manner as may be necessary to support the  
8 programs of the ~~department~~ division as directed by the Governor and the  
9 General Assembly.

10  
11       SECTION 13. Arkansas Code § 8-1-104 is amended to read as follows:

12       8-1-104. Existing rules and regulations.

13       All existing rules and regulations of the ~~Arkansas Department~~ Division  
14 of Environmental Quality not inconsistent with the provisions of this chapter  
15 relating to subjects embraced within this chapter shall remain in full force  
16 and effect until expressly repealed, amended, or superseded if the rules and  
17 regulations do not conflict with the provisions of this chapter.

18  
19       SECTION 14. Arkansas Code § 8-1-105 is amended to read as follows:

20       8-1-105. ~~Arkansas Department~~ Division of Environmental Quality Fee  
21 Trust Fund.

22       (a) ~~An Arkansas Department~~ A Division of Environmental Quality Fee  
23 Trust Fund is established on the books of the Treasurer of State, the Auditor  
24 of State, and the Chief Fiscal Officer of the State.

25       (b) All interest earnings and fees collected under the provisions of  
26 all laws administered by the ~~Arkansas Department~~ Division of Environmental  
27 Quality shall be deposited into this fund unless otherwise provided by law.  
28 The ~~department~~ division shall use these funds to defray the costs of  
29 operating the ~~department~~ division.

30       (c) The ~~department~~ division is hereby authorized to promulgate such  
31 rules and regulations as are necessary to administer the fees, rates, tolls,  
32 or charges for services established by this section and is directed to  
33 prescribe and collect such fees, rates, tolls, or charges for the services  
34 delivered by the ~~department~~ division in such manner as may be necessary to  
35 support the programs of the ~~department~~ division as directed by the Governor  
36 and the General Assembly.

1  
2 SECTION 15. Arkansas Code § 8-1-106(a)(2)(F), concerning disclosure  
3 statements, denial of application, appeal, and regulations, is amended to  
4 read as follows:

5 (F) Any other information the Director of the ~~Arkansas~~  
6 ~~Department~~ Division of Environmental Quality may require that relates to the  
7 competency, reliability, or responsibility of the applicant and affiliated  
8 persons; and

9  
10 SECTION 16. Arkansas Code § 8-1-106(b)(1), concerning disclosure  
11 statements, denial of application, appeal, and regulations, is amended to  
12 read as follows:

13 (b)(1) Except as provided in subdivisions (b)(2) and (4) of this  
14 section, all applicants for the issuance or transfer of any permit, license,  
15 certification, or operational authority issued by the ~~Arkansas Department~~  
16 Division of Environmental Quality shall file a disclosure statement with  
17 their applications. Deliberate falsification or omission of relevant  
18 information from disclosure statements shall be grounds for civil or criminal  
19 enforcement action or administrative denial of a permit, license,  
20 certification, or operational authorization.

21  
22 SECTION 17. Arkansas Code § 8-1-106(b)(2)(B), concerning disclosure  
23 statements, denial of application, appeal, and regulations, is amended to  
24 read as follows:

25 (B) Applicants for a general permit to be issued by the  
26 ~~department~~ division pursuant to its authority to implement the National  
27 Pollutant Discharge Elimination System for storm water discharge or any other  
28 person or entity the Arkansas Pollution Control and Ecology Commission may by  
29 rule exempt from the submissions of a disclosure statement.

30  
31 SECTION 18. Arkansas Code § 8-1-106(b)(5)(B), concerning disclosure  
32 statements, denial of application, appeal, and regulations, is amended to  
33 read as follows:

34 (B) Submits the information on forms developed by the  
35 ~~department~~ division.

36



1 SECTION 19. Arkansas Code § 8-1-107 is amended to read as follows:

2 8-1-107. Inspections – Definitions – Investigations – Inspection  
3 warrant – Exceptions – Penalties.

4 (a) General. Whenever it shall be necessary for the purpose of  
5 implementing or monitoring the enforcement of any law charged to the  
6 authority of the ~~Arkansas Department~~ Division of Environmental Quality, any  
7 authorized employee or agent of the ~~department~~ division may enter upon any  
8 public or private property for the purpose of obtaining information or  
9 conducting investigations or inspections, subject to the following  
10 provisions.

11 (b) Definitions. As used in this section, the following terms shall  
12 have these ascribed meanings:

13 (1) “Administrative inspections” means investigation by  
14 ~~department~~ division personnel at facilities operating within the ~~department’s~~  
15 division’s apparent regulatory jurisdiction;

16 (2) “Facility” means the public or private area, premises,  
17 curtilage, building, or conveyance described as the subject of administrative  
18 inspection;

19 (3) “Pervasively regulated facility or activity” means the  
20 activity or facility that is the location of activity authorized by the  
21 ~~department~~ division through a permit, license, certification, or operational  
22 status approval; and

23 (4)(A) “Probable cause” means showing that an administrative  
24 search limited in scope is necessary to ensure compliance with or enforcement  
25 of laws, regulations, or orders charged to the ~~department~~ division for  
26 implementation.

27 (B) For the purpose of conducting administrative  
28 inspections or applying for administrative warrants, probable cause may be  
29 provided to the ~~department~~ division through complaints or other means that  
30 reasonably justify a limited and controlled administrative inspection.

31 (c) Administrative Inspections.

32 (1)(A) Whenever the ~~department~~ division obtains information that  
33 supports reasonable cause to believe that a violation of any law within its  
34 regulatory authority is being or has been violated, or that unauthorized  
35 regulated conduct is occurring or has occurred, ~~department~~ division personnel  
36 or its agents may demand entry onto any property, public or private, to

1 inspect any facility.

2 (B) The ~~department's~~ division's investigation or  
3 inspection shall be limited to that necessary to confirm or deny the cause  
4 which prompted the investigation or inspection, and shall be conducted during  
5 daylight, during regular business hours, or, under emergency or extraordinary  
6 circumstances, at a time necessary to observe the suspected violation or  
7 unauthorized conduct.

8 (C) Except under emergency circumstances, the ~~department~~  
9 division shall inform such facility's owner or agent of all information which  
10 forms the basis of its probable cause at the time of the inspection.

11 (2) Nothing in this subsection shall be construed as requiring  
12 the ~~department~~ division to forfeit the element of surprise in its inspection  
13 efforts.

14 (3) Also, nothing in this section shall be construed as limiting  
15 the frequency of the periodic or random inspections of pervasively regulated  
16 facilities or activities.

17 (4) For the purpose of this section, a rebuttable presumption  
18 concerning the jurisdiction of the ~~department's~~ division's regulatory  
19 authority is established as it regards the ~~department's~~ division's authority  
20 to inspect any facility.

21 (d) Administrative Inspection Warrants. If consent to inspect is  
22 denied, the ~~department~~ division may obtain an administrative inspection  
23 warrant from a judicial officer. Issuance and execution of administrative  
24 inspection warrants shall be as follows:

25 (1) Any judicial officer otherwise authorized to issue search  
26 warrants within his or her jurisdiction may, upon proper oath or affirmation  
27 showing probable cause as defined by this section, issue warrants for the  
28 purpose of conducting administrative inspections authorized by any law or  
29 regulation administered by the ~~department~~ division;

30 (2) A warrant shall issue only upon an affidavit of a department  
31 official, employee, or agent having knowledge of the facts alleged, sworn to  
32 before the judge or magistrate and establishing the grounds for issuing the  
33 warrant. If the judge or magistrate is satisfied that grounds for the  
34 application exist or that there is probable cause to believe they exist, he  
35 or she shall issue a warrant identifying the facility to be inspected, and  
36 the purpose of the inspection. The warrant shall:

1 (A) State the grounds for its issuance and the name of  
2 each person whose affidavit has been taken in support thereof;

3 (B) Be directed to a ~~department~~ division officer or  
4 employee;

5 (C) Command the person to whom it is directed to inspect  
6 the area, premises, building, or conveyance identified for the purpose  
7 specified;

8 (D) Specifically identify any documents or samples to be  
9 gathered during the inspection;

10 (E) Direct that it be served during normal business hours  
11 unless emergency or extraordinary circumstances compel otherwise; and

12 (F) Designate the judge or magistrate to whom it shall be  
13 returned;

14 (3) If appropriate, the warrant may authorize the review and  
15 copying of documents which may be relevant to the purpose of the inspection.  
16 If documents must be seized for the purpose of copying, the person serving  
17 the warrant shall prepare an inventory of documents taken. The inventory  
18 shall be made in the presence of the person executing the warrant and of the  
19 person from whose possession or facility the documents were taken, if  
20 present, or in the presence of at least one (1) credible person other than  
21 the person executing the warrant. A copy of the inventory shall be delivered  
22 to the person from whom or from whose facility the documents were taken. The  
23 seized documents shall be copied as soon as feasible under circumstances  
24 preserving their authenticity, then returned to the person from whom the  
25 documents were taken;

26 (4) The warrant may authorize the taking of samples of materials  
27 generated, stored, or treated at the facility, or of the water, air, or soils  
28 within the facility's control or that may have been affected by the  
29 facility's operations. The person executing the warrant shall prepare an  
30 inventory of all samples taken. In any inspection conducted pursuant to an  
31 administrative warrant in which such samples are taken, the ~~department~~  
32 division shall make split samples available to the person whose facility is  
33 being inspected;

34 (5) A warrant issued pursuant to this section must be executed  
35 and returned within ten (10) days of its date unless, upon a showing of a  
36 need for additional time, the court orders otherwise. The return of the

1 warrant shall be made promptly, accompanied by a written inventory of any  
2 documents or samples taken;

3 (6) The judge or magistrate who has issued a warrant shall  
4 attach thereto a copy of the return and all papers returnable in connection  
5 therewith and file them with the clerk of the circuit court for the judicial  
6 district in which the inspection was made;

7 (7) This subsection does not prevent the inspection without a  
8 warrant of books and records pursuant to an administrative subpoena issued in  
9 accordance with duly adopted administrative procedures; and

10 (8) A copy of the warrant and all supporting affidavits shall be  
11 provided to the person served, or left at the entry of the facility  
12 inspected.

13 (e) Administrative Inspection Warrants – Exceptions. Notwithstanding  
14 the previous subsection, an administrative warrant shall not be required for  
15 any inspection, including the review and copying of documents and taking of  
16 samples, under the following circumstances:

17 (1) For pervasively regulated facilities or activities as  
18 defined by this section whose permit, license, certification, or operational  
19 approval from the ~~department~~ division provides notice that the ~~department~~  
20 division may inspect regulated activities to assure compliance. If the  
21 ~~department~~ division has reason to believe that a violation of any law has or  
22 is occurring, the basis for such belief shall be communicated at the time of  
23 the inspection;

24 (2) If the owner, operator, or agent in charge of the facility  
25 consents;

26 (3) In situations presenting imminent danger to public health  
27 and safety or the environment;

28 (4) In situations involving inspection of conveyances, if there  
29 is reasonable cause to believe that the mobility of the conveyance makes it  
30 impracticable to obtain a warrant;

31 (5) In any other exception or emergency circumstance when time  
32 or opportunity to apply for a warrant is lacking;

33 (6) In situations involving conditions that may be observed in  
34 an open field, from an area practically open to public access, or in plain  
35 view; or

36 (7) In all other situations in which a warrant is not

1 constitutionally required.

2 (f) Penalties. Any willful and unjustified refusal of right of entry  
 3 and inspection to ~~department~~ division personnel as set out in this section  
 4 shall constitute a misdemeanor subject to a fine of up to twenty-five  
 5 thousand dollars (\$25,000) or civil penalties up to twenty-five thousand  
 6 dollars (\$25,000).

7  
 8 SECTION 20. Arkansas Code § 8-1-201 is amended to read as follows:  
 9 8-1-201. Legislative intent.

10 (a) The General Assembly recognizes that since 1949, when the  
 11 precursor of the Arkansas Pollution Control and Ecology Commission was first  
 12 created, significant changes have occurred in the responsibilities charged to  
 13 the state's environmental agency. This subchapter intends to clarify and  
 14 supersede prior law that does not comport with this delineation of  
 15 responsibility between the ~~Arkansas Department~~ Division of Environmental  
 16 Quality and the commission.

17 (b) Further, in delineating the responsibility between the ~~department~~  
 18 division and the commission, it is the intent of the General Assembly neither  
 19 to expand nor to diminish any rights of property owners of this state under  
 20 Arkansas Constitution, Article 2, § 22.

21  
 22 SECTION 21. Arkansas Code § 8-1-202 is amended to read as follows:  
 23 8-1-202. Powers of the Director of the ~~Arkansas Department~~ Division of

24 Environmental Quality.

25 ~~(a) The executive head of the Arkansas Department of Environmental~~  
 26 ~~Quality shall be the Director of the Arkansas Department of Environmental~~  
 27 ~~Quality, who shall be appointed by the Governor with the consent of the~~  
 28 ~~Senate. The director shall serve at the pleasure of the Governor.~~

29 ~~(b)(1)(a)~~ The director Director of the Division of Environmental  
 30 Quality shall be the executive officer and active administrator of all  
 31 pollution control activities in the state.

32 ~~(2)(b)~~ As such, the director's duties shall include:

33 ~~(A)(i)(1)(A)~~ The administration of permitting, licensing,  
 34 certification, and grants programs deemed necessary to protect the  
 35 environmental integrity of the state.

36 ~~(ii)(B)~~ The director, or his or her delegatee within

1 his or her staff, shall serve as the issuing authority for the state;

2 ~~(B)-(i)-(2)(A)~~ (A) Initiation and settlement of civil or  
3 administrative enforcement actions to compel compliance with laws, orders,  
4 and regulations charged to the responsibility of the ~~department~~ Division of  
5 Environmental Quality.

6 ~~(ii)-(B)~~ (B) In this regard, the director may propose the  
7 assessment of civil penalties as provided by law and take all actions  
8 necessary to collect such penalties;

9 ~~(C)-(3)~~ (3) Issuance of orders in such circumstances that  
10 reasonably require emergency measures to be taken to protect the environment  
11 or the public health and safety, except to the extent that the matter  
12 involved is reserved to the jurisdiction or orders of the Arkansas Pollution  
13 Control and Ecology Commission for rulemaking procedures in § 8-4-202;

14 ~~(D)-(4)~~ (4) Day-to-day administration of all activities that  
15 the ~~department~~ division is empowered by law to perform, including, but not  
16 limited to, the employment and supervision of such technical, legal, and  
17 administrative staff, within approved appropriations and with the approval of  
18 the Secretary of the Department of Energy and Environment, as is necessary to  
19 carry out the responsibilities vested with the ~~department~~ division;

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

23 ~~(F)-(6)~~ (6) Day-to-day administration of environmental programs  
24 delegated to the State of Arkansas by the responsible agencies of the United  
25 States Government;

26 ~~(G)-(7)~~ (7) The supervision of the Arkansas Energy Office of  
27 the ~~Arkansas Department~~ Division of Environmental Quality under the Arkansas  
28 Energy Reorganization and Policy Act of 1981, § 15-10-201 et seq.; and

29 ~~(H)-(8)~~ (8) Any other power or duty specifically vested with  
30 the director or ~~department~~ division by the General Assembly or the secretary.

31 (9) The supervision of the Division of Environmental  
32 Preservation, or the successor division, office, or unit responsible for  
33 reviewing and making specific ecologically oriented recommendations on all  
34 plans, programs, and projects of all other state departments, divisions,  
35 agencies, and commissions and upon all federal plans, programs, and projects  
36 affecting this state.

1  
2 SECTION 22. Arkansas Code § 8-1-203(b)(1)(A), concerning the powers  
3 and responsibilities of the Arkansas Pollution Control and Ecology  
4 Commission, is amended to read as follows:

5 (1)(A) Promulgation of rules and regulations implementing the  
6 substantive statutes charged to the ~~Arkansas Department~~ Division of  
7 Environmental Quality for administration.

8  
9 SECTION 23. Arkansas Code § 8-1-203(b)(4), concerning the powers and  
10 responsibilities of the Arkansas Pollution Control and Ecology Commission, is  
11 amended to read as follows:

12 (4) In the case of permitting or grants decisions, providing the  
13 right to appeal a permitting or grants decision rendered by the Director of  
14 the ~~Arkansas Department~~ Division of Environmental Quality or his or her  
15 delegatee;

16  
17 SECTION 24. Arkansas Code § 8-1-203(b)(7), concerning the powers and  
18 responsibilities of the Arkansas Pollution Control and Ecology Commission, is  
19 amended to read as follows:

20 (7) Make recommendations to the director regarding overall  
21 policy and administration of the ~~department~~ division. However, the director  
22 shall always remain within the plenary authority of the Governor; and

23  
24 SECTION 25. Arkansas Code § 8-1-204 is amended to read as follows:

25 8-1-204. Administrative law judge.

26 (a) The Arkansas Pollution Control and Ecology Commission shall employ  
27 a full-time administrative law judge to perform functions and duties that the  
28 commission shall direct and, in particular, to advise the commission on  
29 matters of law and procedure that may arise during the conduct of commission  
30 duties and responsibilities as outlined in §§ 8-1-203, 8-4-201, 8-4-202, 8-4-  
31 311, 8-5-205, and 8-6-207, or as otherwise provided by law.

32 (b) The administrative law judge shall be selected and hired by the  
33 commission and shall be independent of and not an employee of the ~~Arkansas~~  
34 ~~Department~~ Division of Environmental Quality.

35 (c) The expenses of the administrative law judge shall be paid from  
36 the ~~Arkansas Department~~ Division of Environmental Quality Fee Trust Fund or

1 from other sources as provided by law.

2 (d) The office space for the administrative law judge shall be at a  
3 location other than the offices of the ~~department~~ division.

4 (e) An administrative assistant II shall be supervised by and provide  
5 assistance to the administrative law judge authorized in this section.

6 (f) The disbursing officer of the ~~department~~ division shall disburse  
7 the funds appropriated for the commission's administrative law judge.

8  
9 SECTION 26. Arkansas Code § 8-1-302(2), concerning the definition of  
10 "director" under the laws regarding the Arkansas Pollution Control and  
11 Ecology Commission and the Director of the Arkansas Department of  
12 Environmental Quality, is repealed.

13 ~~(2) "Director" means the Director of the Arkansas Department~~  
14 ~~Division of Environmental Quality;~~

15  
16 SECTION 27. Arkansas Code § 8-1-305(1)(C), concerning exceptions to  
17 the environmental audit privilege, is amended to read as follows:

18 (C) A determination, a permit, or an order made or issued  
19 by the commission or the Director of the ~~Arkansas Department~~ Division of  
20 Environmental Quality; or

21  
22 SECTION 28. Arkansas Code § 8-1-307(a)(3)(C), concerning disclosure in  
23 civil or administrative proceedings, is amended to read as follows:

24 (C) A determination, permit, or order issued by the  
25 commission or the Director of the ~~Arkansas Department~~ Division of  
26 Environmental Quality; and

27  
28 SECTION 29. Arkansas Code § 8-1-307(b)(2)(A), concerning disclosure in  
29 civil or administrative proceedings, is amended to read as follows:

30 (2)(A) In the event additional time is required to prepare a  
31 permit application, the person shall, within ninety (90) days, submit a  
32 schedule to the ~~Arkansas Department~~ Division of Environmental Quality that  
33 identifies the activities required to complete the application, and, if the  
34 schedule is acceptable to the ~~department~~ division, the filing of the  
35 application pursuant to the submitted schedule shall constitute reasonable  
36 diligence to achieve compliance for a failure to obtain a required permit.



1  
2 SECTION 30. Arkansas Code § 8-2-202 is amended to read as follows:

3 8-2-202. Purpose.

4 This subchapter authorizes the ~~Arkansas Department~~ Division of  
5 Environmental Quality to establish and administer an environmental laboratory  
6 accreditation program so that laboratories that submit data and analyses to  
7 the ~~department~~ division may be accredited by the ~~department~~ division as  
8 having demonstrated acceptable compliance with laboratory standards so that  
9 the validity of scientific data submitted to the ~~department~~ division may be  
10 further assured.

11  
12 SECTION 31. Arkansas Code § 8-2-203(1) and (2), concerning the  
13 definition of "acceptable results" and "accreditation" under the  
14 Environmental Laboratory Accreditation Program Act, are amended to read as  
15 follows:

16 (1) "Acceptable results" means results within limits determined  
17 on the basis of statistical procedures as prescribed by the ~~Arkansas~~  
18 ~~Department~~ Division of Environmental Quality;

19 (2) "Accreditation" means the process by which the ~~department~~  
20 division recognizes a laboratory as meeting certain predetermined  
21 qualifications or standards, thereby accrediting the laboratory;

22  
23 SECTION 32. Arkansas Code § 8-2-203(4), concerning the definition of  
24 "certificate" under the Environmental Laboratory Accreditation Program Act,  
25 is amended to read as follows:

26 (4) "Certificate" means a document issued by the ~~department~~  
27 division showing the analytes for which a laboratory has received  
28 accreditation;

29  
30 SECTION 33. Arkansas Code § 8-2-203(7)(A), concerning the definition  
31 of "laboratory" under the Environmental Laboratory Accreditation Program Act,  
32 is amended to read as follows:

33 (7)(A) "Laboratory" means any facility that performs analyses to  
34 determine the chemical, physical, or biological properties of air, water,  
35 solid waste, hazardous waste, wastewater, or soil or subsoil materials or  
36 that performs any other analyses related to environmental quality evaluations

1 required by the ~~department~~ division or which will be submitted to the  
2 ~~department~~ division.

3  
4 SECTION 34. Arkansas Code § 8-2-204(a), concerning the powers and  
5 duties of the Arkansas Department of Environmental Quality, is amended to  
6 read as follows:

7 (a) The ~~Arkansas Department~~ Division of Environmental Quality shall  
8 have the following powers and duties under this subchapter:

9 (1) To establish and administer the Environmental Laboratory  
10 Accreditation Program for laboratories applying for accreditation by the  
11 ~~department~~ division;

12 (2) To enforce the provisions of this subchapter and all laws,  
13 rules, and regulations relating to the program and to environmental testing;

14 (3) To issue, deny, revoke, or suspend the accreditation of a  
15 laboratory for cause; and

16 (4) To refuse to accept analytical results from a laboratory  
17 when the ~~department~~ division reasonably determines that the results do not  
18 meet reasonable criteria for validation, regardless of whether the laboratory  
19 is accredited.

20  
21 SECTION 35. Arkansas Code § 8-2-206 is amended to read as follows:

22 8-2-206. Accreditation – Criteria and procedure.

23 (a)(1)(A)(i) All consulting laboratories performing analyses for which  
24 results are to be submitted to the ~~Arkansas Department~~ Division of  
25 Environmental Quality shall obtain a laboratory accreditation under this  
26 subchapter.

27 (ii) An analyte, method, or matrix for which the  
28 Environmental Laboratory Accreditation Program does not provide accreditation  
29 shall be evaluated by the ~~department~~ division for acceptance.

30 (B) The ~~department~~ division, in its sole discretion, may  
31 refuse to accept results of analyses performed by a consulting laboratory  
32 that does not hold a laboratory accreditation under the program for the  
33 reason that the laboratory is not accredited.

34 (2) Accreditation for laboratories other than consulting  
35 laboratories shall not be mandatory.

36 (b) Applications for accreditation shall be made in the form and

1 manner established by the ~~department~~ division.

2 (c) Upon receipt of an application for accreditation, the ~~department~~  
3 division shall evaluate and act upon the application in accordance with the  
4 following procedures and criteria:

5 (1)(A) The laboratory must successfully complete an evaluation.

6 (B) The ~~department~~ division shall establish evaluation  
7 criteria on proper analytical techniques, quality assurance, recordkeeping,  
8 and reporting methods and procedures and facilities, equipment, and personnel  
9 requirements; and

10 (2) The laboratory must submit to the ~~department~~ division  
11 acceptable results from its analysis of proficiency test samples for the  
12 specific analytes, methods, and matrices selected for accreditation.

13 (d) Upon completion of the laboratory evaluation and the review of the  
14 proficiency test sample results, the ~~department~~ division shall notify the  
15 laboratory of its determination to award or deny accreditation.

16 (e)(1) If the adequacy of the laboratory's capability and its  
17 recordkeeping have been sufficiently established to the satisfaction of the  
18 ~~department~~ division, a certificate will be issued to the laboratory for the  
19 evaluated categories of analytes, methods, and matrices.

20 (2) If accreditation is denied, the ~~department~~ division shall  
21 set forth, in writing, the reasons for denial.

22  
23 SECTION 36. Arkansas Code § 8-2-207(b), concerning the accreditation,  
24 duration, and renewal of a certificate of accreditation, is amended to read  
25 as follows:

26 (b) Accreditation may be renewed for additional periods of one (1)  
27 year's duration upon application for renewal made to the ~~Arkansas Department~~  
28 Division of Environmental Quality.

29  
30 SECTION 37. The introductory language of Arkansas Code § 8-2-208(a),  
31 concerning laboratory accreditation and revocation by the Arkansas Department  
32 of Environmental Quality, is amended to read as follows:

33 (a) After a laboratory is accredited, the laboratory's accreditation  
34 may be revoked or suspended by the ~~Arkansas Department~~ Division of  
35 Environmental Quality for:

36

1 SECTION 38. Arkansas Code § 8-2-208(b)(1) and (2), concerning  
2 laboratory accreditation and revocation by the Arkansas Department of  
3 Environmental Quality, are amended to read as follows:

4 (1) To knowingly falsify any data submitted to the ~~department~~  
5 division or any data related to laboratory analysis;

6 (2) To knowingly make any false statement, representation, or  
7 certification in any application, record, report, plan, or other document  
8 issued by or sent to the ~~department~~ division or related to laboratory  
9 analysis;

10  
11 SECTION 39. Arkansas Code § 8-2-209(a)(1), concerning fees collected  
12 by the Arkansas Department of Environmental Quality, is amended to read as  
13 follows:

14 (a)(1) The ~~Arkansas Department~~ Division of Environmental Quality may  
15 assess and collect reasonable fees from participating laboratories for the  
16 administrative costs of the Environmental Laboratory Accreditation Program.  
17

18 SECTION 40. Arkansas Code § 8-3-102(b)(1), concerning ambient air  
19 quality and hydrogen sulfide, is amended to read as follows:

20 (b)(1) Before the commission proposes an ambient standard or  
21 regulatory mechanism concerning hydrogen sulfide that will result in more  
22 stringent or restrictive control provisions than are currently provided by  
23 ~~Arkansas Department~~ Division of Environmental Quality permitting practices,  
24 the commission shall direct the ~~department~~ division to prepare, with the  
25 assistance and cooperation of state agencies with appropriate expertise, an  
26 economic impact and environmental benefit analysis justifying more stringent  
27 or restrictive operating conditions.  
28

29 SECTION 41. Arkansas Code § 8-3-102(b)(2)(C), concerning ambient air  
30 quality and hydrogen sulfide, is amended to read as follows:

31 (C) Cost to the regulated community and the ~~department~~  
32 division.

33  
34 SECTION 42. Arkansas Code § 8-3-103(b), concerning hydrogen sulfide  
35 emissions, is amended to read as follows:

36 (b) Method of Prediction. All estimates of ambient concentrations

1 required under this section shall be performed by the ~~Arkansas Department~~  
2 Division of Environmental Quality or performed by the facility and approved  
3 by the ~~department~~ division based on the facility's potential to emit hydrogen  
4 sulfide, the applicable air quality models, databases, and other requirements  
5 specified in the "Guideline on Air Quality Models (Revised)" (1986),  
6 supplement A (1987) and supplement B (1993).

7  
8 SECTION 43. Arkansas Code § 8-3-103(d)(2)(C), concerning hydrogen  
9 sulfide emissions, is amended to read as follows:

10 (C) A facility that is not subject to one (1) of the  
11 technology limits listed in subdivision (d)(2)(B) of this section and that  
12 wishes to apply appropriate hydrogen sulfide control technology may apply to  
13 the ~~department~~ division for a determination of appropriateness at any time,  
14 but no later than ninety (90) days after a determination that the ambient  
15 standard has been exceeded. The application shall be made on such forms and  
16 contain such information as the ~~department~~ division may require and shall  
17 include a reasonable time schedule for implementation. When making a  
18 determination of appropriateness, the ~~department~~ division shall follow the  
19 procedures used for making permitting decisions, including public  
20 participation requirements.

21  
22 SECTION 44. Arkansas Code § 8-3-202(3), concerning the definition of  
23 "state plan" under the laws regarding state emission plans, is amended to  
24 read as follows:

25 (3) "State plan" means a plan to establish and enforce carbon  
26 dioxide emission control measures that the ~~Arkansas Department~~ Division of  
27 Environmental Quality may adopt to implement the obligations of the state  
28 under the federal emission guidelines.

29  
30 SECTION 45. Arkansas Code § 8-3-203(a)(1), concerning the state  
31 emission plan's being dependent on federal emission guidelines, is amended to  
32 read as follows:

33 (a)(1) This subchapter does not require the ~~Arkansas Department~~  
34 Division of Environmental Quality to develop a state plan to regulate carbon  
35 dioxide emissions from existing fossil-fuel-fired electric generating units  
36 under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d).

1  
2 SECTION 46. Arkansas Code § 8-3-204 is amended to read as follows:

3 8-3-204. Appeal of state plan – Adjudicatory process.

4 (a) If the ~~Arkansas Department~~ Division of Environmental Quality  
5 proposes to finalize a state plan submittal for review and approval by the  
6 United States Environmental Protection Agency, the ~~department~~ division shall  
7 comply with the procedural requirements for notice and public comment  
8 specified in § 8-4-317.

9 (b)(1) Only a person or an organization that submits comments on the  
10 record during the public comment period has standing to appeal the final  
11 decision of the ~~department~~ division to the Arkansas Pollution Control and  
12 Ecology Commission upon written application made within thirty (30) days  
13 after the service of notice made under § 8-4-317(b)(2)(A).

14 (2) An appeal under subdivision (b)(1) of this section shall be  
15 processed as a permit appeal under § 8-4-205.

16  
17 SECTION 47. Arkansas Code § 8-3-205(a), concerning assessing the  
18 effects of the state emission plan, is amended to read as follows:

19 (a) Before preparing a petition to initiate rulemaking for the  
20 development of regulations implementing a state plan for regulating carbon  
21 dioxide emissions from covered electric generating units, the ~~Arkansas~~  
22 ~~Department~~ Division of Environmental Quality shall prepare a report that  
23 takes into account the factors specified in § 8-4-312 and the Clean Air Act,  
24 42 U.S.C. § 7401 et seq., as applicable.

25  
26 SECTION 48. The introductory language of Arkansas Code § 8-3-  
27 205(b)(1), concerning assessing the effects of the state emission plan, is  
28 amended to read as follows:

29 (b)(1) In addition to the report specified in subsection (a) of this  
30 section, the ~~department~~ division shall coordinate with the Arkansas Public  
31 Service Commission in the preparation of a report that assesses the effects  
32 of the state plan on the electric power sector, including without limitation:  
33

34 SECTION 49. The introductory language of Arkansas Code § 8-3-  
35 205(b)(2), concerning assessing the effects of the state emission plan, is  
36 amended to read as follows:

1           (2) The ~~department~~ division shall further coordinate with the  
2 Arkansas Economic Development Commission in the preparation of a report that  
3 assesses the effects of the state plan on the electricity consumers within  
4 the state, including without limitation:

5  
6           SECTION 50. Arkansas Code § 8-3-205(c), concerning assessing the  
7 effects of the state emission plan, is amended to read as follows:

8           (c) The reports required by this section shall be included with any  
9 petition filed by the ~~department~~ division to initiate rulemaking for  
10 regulations that implement a state plan for regulating carbon dioxide  
11 emissions from covered electric generating units.

12  
13           SECTION 51. The introductory language of Arkansas Code § 8-3-206(a),  
14 concerning submission of the state emission plan, is amended to read as  
15 follows:

16           (a) The ~~Arkansas Department~~ Division of Environmental Quality shall  
17 not submit a state plan to the United States Environmental Protection Agency  
18 under § 8-3-207 if the state plan:

19  
20           SECTION 52. The introductory language of Arkansas Code § 8-3-206(b),  
21 concerning submission of the state emission plan, is amended to read as  
22 follows:

23           (b) The ~~department~~ division shall not submit a state plan to the  
24 United States Environmental Protection Agency until:

25  
26           SECTION 53. Arkansas Code § 8-3-207(a), concerning procedures for  
27 approval of the state emission plan, is amended to read as follows:

28           (a) Not later than fifteen (15) days after adopting a state plan, the  
29 ~~Arkansas Department~~ Division of Environmental Quality shall transmit to the  
30 cochairs of the Legislative Council a copy of the state plan and the  
31 accompanying report developed under § 8-3-205.

32  
33           SECTION 54. Arkansas Code § 8-3-207(c), concerning procedures for  
34 approval of the state emission plan, is amended to read as follows:

35           (c) If the Legislative Council fails to approve a state plan under  
36 subsection (b) of this section, the ~~department~~ division may submit a revised

1 version of the state plan, with an accompanying revised report, to the  
2 cochairs of the Legislative Council for approval under this section.

3  
4 SECTION 55. Arkansas Code § 8-3-207(d)(1), concerning procedures for  
5 approval of the state emission plan, is amended to read as follows:

6 (1) Sufficient time has passed for the Legislative Council to  
7 consider a state plan submitted by the ~~department~~ division for legislative  
8 approval;

9  
10 SECTION 56. Arkansas Code § 8-3-208 is amended to read as follows:

11 8-3-208. Rate and reliability safety valve.

12 (a) If a state plan approved under this subchapter would result in a  
13 significant increase in the total electric or natural gas bill annually for  
14 any customer class, the ~~Arkansas Department~~ Division of Environmental Quality  
15 shall reopen the proceeding under § 8-3-204 and, after the opportunity for a  
16 hearing, revise the state plan to satisfy § 8-3-206(a)(1) and transmit the  
17 revised state plan to the cochairs of the Legislative Council for approval  
18 under § 8-3-207.

19 (b)(1) Each year the ~~department~~ division shall evaluate the impact of  
20 electricity rate increases on the energy-intensive-trade-exposed  
21 manufacturers and the resulting greenhouse gas leakage.

22 (2) If increased electric rates are found to be contributing to  
23 increased manufacturing greenhouse gas leakage, the ~~department~~ division shall  
24 reopen the proceeding under § 8-3-204 and, after the opportunity for a  
25 hearing, revise the state plan to avoid manufacturing greenhouse gas leakage  
26 and transmit the revised state plan to the cochairs of the Legislative  
27 Council for approval under § 8-3-207.

28  
29 SECTION 57. Arkansas Code § 8-4-103(a)(1)(A), concerning criminal,  
30 civil, and administrative penalties of the Arkansas Pollution Control and  
31 Ecology Commission and the Arkansas Department of Environmental Quality, is  
32 amended to read as follows:

33 (1)(A) Any person that violates any provision of this chapter,  
34 that commits any unlawful act under it, or that violates any rule,  
35 regulation, or order of the Arkansas Pollution Control and Ecology Commission  
36 or the ~~Arkansas Department~~ Division of Environmental Quality shall be guilty



1 of a misdemeanor.

2  
3 SECTION 58. Arkansas Code § 8-4-103(a)(2)(A)(i), concerning criminal,  
4 civil, and administrative penalties of the Arkansas Pollution Control and  
5 Ecology Commission and the Arkansas Department of Environmental Quality, is  
6 amended to read as follows:

7 (i) Violate any provision of this chapter, commit  
8 any unlawful act under it, or violate any rule, regulation, or order of the  
9 commission or ~~department~~ Division of Environmental Quality and leave the  
10 state or remove his or her person from the jurisdiction of this state;

11  
12 SECTION 59. The introductory language of Arkansas Code § 8-4-103(b),  
13 concerning criminal, civil, and administrative penalties of the Arkansas  
14 Pollution Control and Ecology Commission and the Arkansas Department of  
15 Environmental Quality, is amended to read as follows:

16 (b) Civil Penalties. The ~~department~~ Division of Environmental Quality  
17 may institute a civil action in any court of competent jurisdiction to  
18 accomplish any of the following:

19  
20 SECTION 60. The introductory language of Arkansas Code § 8-4-  
21 103(b)(3), concerning criminal, civil, and administrative penalties of the  
22 Arkansas Pollution Control and Ecology Commission and the Arkansas Department  
23 of Environmental Quality, is amended to read as follows:

24 (3) Recover all costs, expenses, and damages to the ~~department~~  
25 Division of Environmental Quality and any other agency or division of the  
26 state in enforcing or effectuating the provisions of this chapter, including,  
27 but not limited to, natural resource damages;

28  
29 SECTION 61. Arkansas Code § 8-4-103(c)(2)(C), concerning criminal,  
30 civil, and administrative penalties of the Arkansas Pollution Control and  
31 Ecology Commission and the Arkansas Department of Environmental Quality, is  
32 amended to read as follows:

33 (C) These administrative procedures may also be used to  
34 recover all costs, expenses, and damages to the ~~department~~ Division of  
35 Environmental Quality and any other agency or subdivision of the state in  
36 enforcing or effectuating the provisions of this chapter, including, but not

1 limited to, natural resource damages.

2  
3 SECTION 62. Arkansas Code § 8-4-103(d)(1)(A), concerning criminal,  
4 civil, and administrative penalties of the Arkansas Pollution Control and  
5 Ecology Commission and the Arkansas Department of Environmental Quality, is  
6 amended to read as follows:

7 (d)(1)(A) Before assessing a civil penalty under subsection (c) of  
8 this section, the Director of the ~~Arkansas Department~~ Division of  
9 Environmental Quality shall provide public notice of and a reasonable  
10 opportunity to comment on the proposed issuance of the order.

11  
12 SECTION 63. Arkansas Code § 8-4-103(f)(1), concerning criminal, civil,  
13 and administrative penalties of the Arkansas Pollution Control and Ecology  
14 Commission and the Arkansas Department of Environmental Quality, is amended  
15 to read as follows:

16 (f)(1) All moneys collected as reimbursement for expenses, costs, and  
17 damages to the ~~department~~ Division of Environmental Quality shall be  
18 deposited into the operating fund of the ~~department~~ Division of Environmental  
19 Quality.

20  
21 SECTION 64. Arkansas Code § 8-4-103(f)(3)(B) and (C), concerning  
22 criminal, civil, and administrative penalties of the Arkansas Pollution  
23 Control and Ecology Commission and the Arkansas Department of Environmental  
24 Quality, are amended to read as follows:

25 (B) The violator may provide in-kind services or cash  
26 contributions as directed by the ~~department~~ Division of Environmental Quality  
27 by utilizing the violator's own expertise, by hiring and compensating  
28 subcontractors to perform the services, by arranging and providing financing  
29 for the services, or by other financial arrangements initiated by the  
30 ~~department~~ Division of Environmental Quality in which the violator and the  
31 ~~department~~ Division of Environmental Quality retain no monetary benefit,  
32 however remote.

33 (C) The services shall not duplicate or augment services  
34 already provided by the ~~department~~ Division of Environmental Quality through  
35 appropriations of the General Assembly.

36

1 SECTION 65. Arkansas Code § 8-4-103(1)(3)(A), concerning criminal,  
2 civil, and administrative penalties of the Arkansas Pollution Control and  
3 Ecology Commission and the Arkansas Department of Environmental Quality, is  
4 amended to read as follows:

5 (3)(A) The ~~department~~ division may seize any cleaning agent held  
6 for sale or distribution in violation of this chapter.

7  
8 SECTION 66. Arkansas Code § 8-4-104(b)-(g), concerning the members of  
9 the Arkansas Pollution Control and Ecology Commission, are amended to read as  
10 follows:

11 (b) The Arkansas Pollution Control and Ecology Commission shall be  
12 composed of ~~thirteen (13)~~ fifteen (15) members:

13 (1)(A) The Governor, by and with the advice and consent of the  
14 Senate, shall appoint seven (7) members.

15 (B) Each congressional district shall be represented on  
16 the Arkansas Pollution Control and Ecology Commission by at least one (1)  
17 member, and no district shall have more than two (2) members of the seven (7)  
18 appointees.

19 (C)(i) The Governor shall not appoint a member to  
20 represent any specific or special interest group, organization, or  
21 philosophy.

22 (ii) However, in making appointments to the Arkansas  
23 Pollution Control and Ecology Commission, the Governor shall appoint  
24 individuals who have knowledge or expertise in matters within the  
25 jurisdiction of the Arkansas Pollution Control and Ecology Commission,  
26 including government, business or industry, agriculture and livestock,  
27 forestry, health, ecology, recreation and tourism, and geology.

28 (D) Each member appointed by the Governor shall be  
29 appointed for a term of four (4) years; and

30 (2) The other ~~six (6)~~ eight (8) members of the Arkansas  
31 Pollution Control and Ecology Commission shall be:

32 (A) The ~~Director~~ Secretary of the Department of Health or  
33 his or her designee; and

34 (B) ~~(i) The directors of the Arkansas State Game and Fish  
35 Commission, the Arkansas Forestry Commission, the Arkansas Natural Resources  
36 Commission, the Oil and Gas Commission, and the Arkansas Geological Survey.~~

1 The Secretary of the Department of Agriculture, or his or her designee;

2 ~~(ii) Any director specified in subdivision~~  
 3 ~~(b)(2)(B)(i) of this section may designate the agency's deputy director or~~  
 4 ~~assistant director to serve in lieu of the director.~~

5 (C) The Secretary of the Department of Energy and  
 6 Environment, or his or her designee;

7 (D) The Director of the Arkansas State Game and Fish  
 8 Commission, or his or her designee;

9 (E) The State Forester, or his or her designee on behalf  
 10 of the State Forestry Commission;

11 (F) The Director of the Oil and Gas Commission, or his or  
 12 her designee;

13 (G) The Director of the Arkansas Natural Resources  
 14 Commission, or his or her designee; and

15 (H) The State Geologist, or his or her designee, on  
 16 behalf of the State Geological Survey.

17 (c) Elected city, county, and state officials shall not serve on the  
 18 Arkansas Pollution Control and Ecology Commission after the expiration of any  
 19 current member's term.

20 (d) In the event of a vacancy in the membership of the Arkansas  
 21 Pollution Control and Ecology Commission, the Governor shall appoint a person  
 22 to fill the vacancy temporarily who shall serve until the next meeting of the  
 23 Senate, when some person shall be appointed by the Governor, by and with the  
 24 consent and approval of the Senate, to serve the remainder of the unexpired  
 25 term.

26 (e)(1) The chair and vice chair shall be elected annually.

27 (2) The members of the Arkansas Pollution Control and Ecology  
 28 Commission representing the state agencies shall not serve as chair or vice  
 29 chair.

30 (f)(1)(A) The Arkansas Pollution Control and Ecology Commission shall  
 31 hold at least four (4) regular meetings in each calendar year at times and  
 32 places to be fixed by the Arkansas Pollution Control and Ecology Commission  
 33 and such other meetings as may be necessary.

34 (B) Special meetings may be called at the discretion of  
 35 the chair, and they shall be called by him or her upon written request of two  
 36 (2) members of the Arkansas Pollution Control and Ecology Commission by

1 delivery of written notice to each member of the Arkansas Pollution Control  
2 and Ecology Commission.

3 (2) Nine (9) members of the Arkansas Pollution Control and  
4 Ecology Commission shall constitute a quorum to transact business in both  
5 regular and special meetings.

6 (g)(1) Each member of the Arkansas Pollution Control and Ecology  
7 Commission representing state agencies shall receive no additional salary or  
8 per diem for services as a member of the Arkansas Pollution Control and  
9 Ecology Commission but may receive expense reimbursement in accordance with §  
10 25-16-901 et seq.

11 (2) The other seven (7) members appointed by the Governor may  
12 receive expense reimbursement and stipends in accordance with § 25-16-901 et  
13 seq.  
14

15 SECTION 67. Arkansas Code § 8-4-105 is repealed.

16 ~~8-4-105. Director of the Arkansas Department of Environmental Quality.~~

17 ~~(a)(1) The executive head of the Arkansas Department of Environmental~~  
18 ~~Quality shall be the Director of the Arkansas Department of Environmental~~  
19 ~~Quality, who shall be appointed by the Governor with the advice and consent~~  
20 ~~of the Senate, and shall serve at the pleasure of the Governor.~~

21 ~~(2) The director, with the advice and consent of the Governor,~~  
22 ~~shall appoint the heads of the divisions of the department, including the~~  
23 ~~Division of Water Pollution Control, the Division of Air Pollution Control,~~  
24 ~~the Division of Solid Waste Management, the Division of Environmental~~  
25 ~~Preservation, the Division of Administration, and such other divisions as may~~  
26 ~~be established.~~

27 ~~(3) All of the personnel of the department shall be employed by~~  
28 ~~and serve at the pleasure of the director. However, nothing in this~~  
29 ~~subdivision (a)(3) shall be construed to reduce any right which an employee~~  
30 ~~shall have under any civil service or merit system.~~

31 ~~(b)(1) The director shall be the executive officer and active~~  
32 ~~administrator of all pollution control activities.~~

33 - ~~(2) All of the powers of the Arkansas Pollution Control and~~  
34 ~~Ecology Commission under §§ 8-4-201(b)(5), 8-4-203, and 8-4-204 relating to~~  
35 ~~plans and specifications for disposal systems and permits for the discharge~~  
36 ~~of sewage, industrial wastes, or other wastes into the waters of the state~~

1 ~~are vested in the director.~~

2  
3 SECTION 68. Arkansas Code § 8-4-106 is amended to read as follows:

4 8-4-106. Technical and other services and public assistance.

5 (a) Technical, scientific, legal, or other services may be performed,  
6 insofar as practicable, by personnel of other state agencies and educational  
7 institutions and the Attorney General. However, the personnel of these state  
8 agencies shall receive no additional salary or wages for their services to  
9 the ~~Arkansas Department~~ Division of Environmental Quality.

10 (b) The Director of the ~~Arkansas Department~~ Division of Environmental  
11 Quality, however, may employ and compensate, within appropriations available,  
12 consultants and such assistants and employees as may be necessary to carry  
13 out the provisions of this chapter and prescribe their powers and duties.

14  
15 SECTION 69. Arkansas Code § 8-4-107 is amended to read as follows:

16 8-4-107. Prosecution of public nuisance actions.

17 In any legal action arising from, relating to, or including violations  
18 of laws or regulations charged to the enforcement authority of the ~~Arkansas~~  
19 ~~Department~~ Division of Environmental Quality that also alleges the existence  
20 of a public nuisance at common law, the Attorney General or the ~~department~~  
21 division may serve as the instrumentality of the state authorized to initiate  
22 and prosecute such action.

23  
24 SECTION 70. The introductory language of Arkansas Code § 8-4-201(a),  
25 concerning the powers and duties of the Arkansas Department of Environmental  
26 Quality and the Arkansas Pollution Control and Ecology Commission, is amended  
27 to read as follows:

28 (a) The ~~Arkansas Department~~ Division of Environmental Quality or its  
29 successor is given and charged with the following powers and duties:

30  
31 SECTION 71. Arkansas Code § 8-4-201(b)(1)(A), concerning the powers  
32 and duties of the Arkansas Department of Environmental Quality and the  
33 Arkansas Pollution Control and Ecology Commission, is amended to read as  
34 follows:

35 (1)(A) Promulgation of rules and regulations, including water  
36 quality standards and the classification of the waters of the state and

1 moratoriums or suspensions of the processing of types or categories of  
2 permits, implementing the substantive statutes charged to the ~~department~~  
3 division for administration.

4  
5 SECTION 72. Arkansas Code § 8-4-201(b)(3) and (4), concerning the  
6 powers and duties of the Arkansas Department of Environmental Quality and the  
7 Arkansas Pollution Control and Ecology Commission, are amended to read as  
8 follows:

9 (3) Promulgation of rules and regulations governing  
10 administrative procedures for challenging or contesting ~~department~~ division  
11 actions;

12 (4) In the case of permitting or grants decisions, provide the  
13 right to appeal a permitting or grants decision rendered by the Director of  
14 the ~~Arkansas Department~~ Division of Environmental Quality or his or her  
15 delegatee;

16  
17 SECTION 73. Arkansas Code § 8-4-201(b)(7), concerning the powers and  
18 duties of the Arkansas Department of Environmental Quality and the Arkansas  
19 Pollution Control and Ecology Commission, is amended to read as follows:

20 (7) Make recommendations to the director regarding overall  
21 policy and administration of the ~~department~~ division, provided, however, that  
22 the director shall always remain within the plenary authority of the ~~Governor~~  
23 Secretary of the Department of Energy and Environment; and

24  
25 SECTION 74. Arkansas Code § 8-4-202(a), concerning the rules and  
26 regulations of the Arkansas Pollution Control and Ecology Commission, is  
27 amended to read as follows:

28 (a) The Arkansas Pollution Control and Ecology Commission is given and  
29 charged with the power and duty to adopt, modify, or repeal, after notice and  
30 public hearings, rules and regulations implementing or effectuating the  
31 powers and duties of the ~~Arkansas Department~~ Division of Environmental  
32 Quality and the commission under this chapter.

33  
34 SECTION 75. Arkansas Code § 8-4-202(d)(4)(A)(iii), concerning the  
35 rules and regulations of the Arkansas Pollution Control and Ecology  
36 Commission, is amended to read as follows:

1 (iii) In all other cases, the ~~department~~ division  
2 must provide its own justification with appropriate references to the  
3 scientific and engineering literature or written studies conducted by the  
4 ~~department~~ division;

5  
6 SECTION 76. Arkansas Code § 8-4-202(e)(3), concerning the rules and  
7 regulations of the Arkansas Pollution Control and Ecology Commission, is  
8 amended to read as follows:

9 (3) The imminent loss of federal funding, certification, or  
10 authorization for any program administered by the ~~department~~ division shall  
11 establish a prima facie case of imminent peril to the public health, safety,  
12 or welfare.

13  
14 SECTION 77. Arkansas Code § 8-4-203 is amended to read as follows:

15 8-4-203. Permits generally – Definitions.

16 (a) The ~~Arkansas Department~~ Division of Environmental Quality or its  
17 successor is given and charged with the power and duty to issue, continue in  
18 effect, revoke, modify, or deny permits, under such conditions as it may  
19 prescribe:

20 (1) To prevent, control, or abate pollution;

21 (2) For the discharge of sewage, industrial waste, or other  
22 wastes into the waters of the state, including the disposal of pollutants  
23 into wells; and

24 (3) For the installation, modification, or operation of disposal  
25 systems or any part of them.

26 (b)(1)(A) The ~~department~~ division shall not issue, modify, renew, or  
27 transfer a National Pollutant Discharge Elimination System permit or state  
28 permit for a nonmunicipal domestic sewage treatment works without the permit  
29 applicant first:

30 (i) Paying the trust fund contribution fee required  
31 under subdivision (b)(4) of this section;

32 (ii) Submitting the assessment required by  
33 subdivision (b)(1)(D) of this section; and

34 (iii) Certifying that the permit applicant has  
35 complied with applicable local ordinances and regulations, including without  
36 limitation:



- 1 (a) Local zoning ordinances;
- 2 (b) Local planning authority regulations; and
- 3 (c) Local permitting requirements.

4 (B) As used in this section, “nonmunicipal domestic sewage  
 5 treatment works” means a device or system operated by an entity other than a  
 6 city, town, or county that treats, in whole or in part, waste or wastewater  
 7 from humans or household operations and must continuously operate to protect  
 8 human health and the environment despite a permittee’s failure to maintain or  
 9 operate the device or system.

10 (C) The following are specifically exempted from the  
 11 requirements of this subsection:

- 12 (i) State or federal facilities;
- 13 (ii) Schools;
- 14 (iii) Universities and colleges;
- 15 (iv) Entities that continuously operate due to a  
 16 connection with a city, town, or county; and
- 17 (v) A commercial or industrial entity that treats  
 18 domestic sewage from its operations and does not accept domestic sewage from  
 19 other entities or residences.

20 (D) Each application for the initial permit and any  
 21 subsequent permit renewal, modification, or transfer for a nonmunicipal  
 22 domestic sewage treatment works submitted under this section shall be  
 23 accompanied by an assessment developed by a professional engineer licensed by  
 24 the state that includes:

- 25 (i) A cost estimate for a third party to operate and  
 26 maintain the nonmunicipal domestic sewage treatment works for five (5) years;
- 27 (ii) A list of all necessary capital expenditures,  
 28 system upgrades, or significant repairs and a milestone schedule for  
 29 completion within five (5) years; and
- 30 (iii) A financial plan that demonstrates to the  
 31 ~~department’s~~ division’s satisfaction the permittee’s financial ability to  
 32 operate and maintain the nonmunicipal domestic sewage treatment works each  
 33 year for five (5) years.

34 (E)(i) Except as provided under subdivision (b)(1)(E)(ii)  
 35 of this section, the ~~department~~ division shall not issue, renew, or transfer  
 36 permit coverage for nonmunicipal domestic sewage treatment works to property

1 owners' associations or homeowners' associations after January 1, 2018.

2 (ii) A property owners' association or homeowners'  
3 association with permit coverage before December 31, 2017, may retain permit  
4 coverage if the property owners' association or homeowners' association  
5 complies with this section.

6 (2) Until January 1, 2016, the ~~department~~ division may reduce or  
7 waive the amount of the required financial assurance if the permit applicant  
8 can demonstrate to the ~~department's~~ division's satisfaction that:

9 (A) For a renewal permit, during the five (5) years  
10 preceding the application for a renewal permit, the nonmunicipal domestic  
11 sewage treatment works has:

12 (i) Maintained the nonmunicipal domestic sewage  
13 treatment works in continuous operation;

14 (ii) Maintained the nonmunicipal domestic sewage  
15 treatment works in substantial compliance with the existing discharge permit  
16 issued by the ~~department~~ division, which shall be demonstrated by submitting  
17 the following:

18 (a) All discharge monitoring reports;

19 (b) Evidence that the nonmunicipal domestic  
20 sewage treatment works has not exceeded the same permit effluent criteria in  
21 any two (2) consecutive monitoring periods during the previous three (3)  
22 years;

23 (c) Evidence that no more than ten percent  
24 (10%) of the nonmunicipal domestic sewage treatment works' submitted  
25 discharge monitoring reports show effluent violations; and

26 (d) Evidence that there have not been any  
27 administrative or judicial orders entered against the owner or operator for  
28 violations of state or federal environmental laws, rules, or regulations or  
29 permits issued by the ~~department~~ division;

30 (iii) Maintained the services of a certified  
31 wastewater treatment operator, where applicable;

32 (iv)(a) Remained financially solvent, which shall be  
33 demonstrated by either:

34 (1) The nonmunicipal domestic sewage  
35 treatment works' federal tax returns for the five (5) years preceding the  
36 application for a renewal permit and a sworn affidavit from a corporate

1 official or other responsible official representing the nonmunicipal domestic  
2 sewage treatment works that lists all assets and liabilities for the  
3 nonmunicipal domestic sewage treatment works; or

4 (2) An independent certified public  
5 accountant's report on the owner's or operator's independently reviewed  
6 financial statements.

7 (b) The review of financial statements under  
8 subdivision (b)(2)(A)(iv)(a)(2) of this section shall be conducted in  
9 accordance with the American Institute of Certified Public Accountants'  
10 Professional Standards, as they existed on January 1, 2013; and

11 (v) Operated the nonmunicipal domestic sewage  
12 treatment works to prevent the discharge of waterborne pollutants in  
13 unacceptable concentrations to the surface waters or groundwater of the state  
14 as defined in the permit or as defined in the state's water quality  
15 standards; or

16 (B) For a new permit:

17 (i) The reduction or waiver is necessary to  
18 accommodate important economic or social development in the area of the  
19 proposed nonmunicipal domestic sewage treatment works; and

20 (ii) The applicant has shown a history of financial  
21 responsibility and compliance with regulatory requirements.

22 (3) The ~~department~~ division may withdraw a reduction or waiver  
23 granted under this subsection at any time if the permittee has a permit  
24 violation in three (3) or more consecutive discharge monitoring periods.

25 (4)(A) A permittee shall pay the trust fund contribution fee  
26 determined by the ~~department~~ division under this subdivision (b)(4) to the  
27 ~~department~~ division.

28 (B)(i) The ~~department~~ division shall determine the  
29 required initial and annual trust fund contribution fees for each  
30 nonmunicipal domestic sewage treatment works based on each nonmunicipal  
31 domestic sewage treatment works' design treatment capacity according to the  
32 National Pollutant Discharge Elimination System permit or the state permit  
33 and existing and projected number of residential end users.

34 (ii)(a) The ~~department~~ division shall require an  
35 initial trust fund contribution fee for each construction permit for a new  
36 nonmunicipal domestic sewage treatment works or any modification to an

1 existing nonmunicipal domestic sewage treatment works resulting in an  
2 increase in design treatment capacity according to the National Pollutant  
3 Discharge Elimination System permit or the state permit.

4 (b) The initial trust fund contribution fee  
5 required by the ~~department~~ division for a new nonmunicipal domestic sewage  
6 treatment works is ten percent (10%) of the estimated cost of construction of  
7 the new nonmunicipal domestic sewage treatment works as certified by the  
8 engineer of record.

9 (c) The initial trust fund contribution fee  
10 required by the ~~department~~ division for modifications to existing  
11 nonmunicipal domestic sewage treatment works is ten percent (10%) of the  
12 estimated cost of construction for the modification of the nonmunicipal  
13 domestic sewage treatment works as certified by the engineer of record.

14 (d) The ~~department~~ division shall reduce the  
15 initial trust fund contribution fee if:

16 (1) The nonmunicipal domestic sewage  
17 treatment works is subject to an enforcement action; and

18 (2) The corrective actions approved by  
19 the ~~department~~ division would require the nonmunicipal domestic sewage  
20 treatment works to make an initial trust fund contribution.

21 (e) The ~~department~~ division shall not require  
22 an initial trust fund contribution fee if the design treatment capacity  
23 according to the National Pollutant Discharge Elimination System permit or  
24 the state permit is not increased.

25 (iii) The annual trust fund contribution fee  
26 required by the ~~department~~ division shall not exceed one thousand dollars  
27 (\$1,000) per year for no-discharge permits or five thousand dollars (\$5,000)  
28 per year for discharge permits.

29 (iv)(a) Except as otherwise provided in this  
30 subsection, a nonmunicipal domestic sewage treatment works may apply for  
31 reimbursement for a maximum of fifty percent (50%) of the costs for capital  
32 expenditures necessary to maintain permit compliance made to the nonmunicipal  
33 domestic sewage treatment facility in the previous five (5) years if:

34 (1) Funding is available and  
35 appropriated; and

36 (2) The ~~department~~ division has issued

1 that nonmunicipal domestic sewage treatment facility's third permit renewal  
 2 following its initial trust fund contribution.

3 (b) Applications for reimbursement under this  
 4 subdivision (b)(4)(B) shall include a statement certified by a professional  
 5 engineer licensed by the State of Arkansas identifying the necessary capital  
 6 costs expended.

7 (v) Reimbursements from the Nonmunicipal Domestic  
 8 Sewage Treatment Works Trust Fund are subject to the following restrictions:

9 (a) Over the lifetime of a nonmunicipal  
 10 domestic sewage treatment facility, the reimbursement to a nonmunicipal  
 11 domestic sewage treatment works shall not exceed seventy-five percent (75%)  
 12 of that nonmunicipal domestic sewage treatment facility's initial trust fund  
 13 contribution fee;

14 (b) If the Director of the ~~Arkansas Department~~  
 15 Division of Environmental Quality determines that a nonmunicipal domestic  
 16 sewage treatment works is in a state of chronic noncompliance, that  
 17 nonmunicipal domestic sewage treatment works shall not receive reimbursement  
 18 from the Nonmunicipal Domestic Sewage Treatment Works Trust Fund; and

19 (c) The ~~department~~ division shall reimburse a  
 20 nonmunicipal domestic sewage treatment works based on a pro rata share of  
 21 each submitted request compared to the total remaining funding available if  
 22 there are insufficient moneys available in a fiscal year to make  
 23 reimbursements for all submitted requests under this subsection after:

24 (1) Deducting the moneys required to  
 25 make payments to third-party contractors hired by the ~~department~~ division  
 26 from the fund;

27 (2) Calculating the total remaining  
 28 funding available; and

29 (3) Allocating the moneys available for  
 30 reimbursement to each applicant for reimbursement.

31 (vi) The Arkansas Pollution Control and Ecology  
 32 Commission may promulgate regulations to implement this subsection.

33 (C) The trust fund contribution fee required under this  
 34 subdivision (b)(4):

35 (i) May be collected in conjunction with any other  
 36 permit fees;

1 (ii) Shall be paid before a permit is issued or  
2 renewed; and

3 (iii) Shall be deposited into the fund.

4 (D) If the total amount in the fund equals or exceeds two  
5 million one hundred thousand dollars (\$2,100,000), additional trust fund  
6 contribution fees shall not be collected by the ~~department~~ division until the  
7 total amount of the fund equals or is less than one million five hundred  
8 thousand dollars (\$1,500,000), at which time the collection of required trust  
9 fund contribution fees shall resume.

10 (5)(A) A permittee is responsible for ensuring that the required  
11 trust fund contribution fee is received by the ~~department~~ division by the due  
12 date determined by the ~~department~~ division.

13 (B) If the ~~department~~ division does not timely receive the  
14 required trust fund contribution fees for a nonmunicipal domestic sewage  
15 treatment works, the ~~department~~ division may initiate procedures to suspend  
16 or revoke the permit under which the nonmunicipal domestic sewage treatment  
17 works is operated.

18 (C) A permit applicant's or permit transfer applicant's  
19 failure to pay the required trust fund contribution fee assessed by the  
20 ~~department~~ division under this section is:

21 (i) Grounds for denying the permit or the permit  
22 transfer; and

23 (ii) A violation of this chapter and subjects the  
24 applicant to the penalties described in § 8-4-103.

25 (6) Sanctions for violating this subsection may include without  
26 limitation civil penalties and suspension or revocation of a permit.

27 (7) The ~~department~~ division may seek cost recovery from an owner  
28 or operator and reimbursement to the fund of any moneys expended under this  
29 section, including without limitation the institution of a civil action  
30 against the owner or operator.

31 (8) The ~~department~~ division shall not directly operate or be  
32 responsible for the operation of a nonmunicipal domestic sewage treatment  
33 works.

34 (9)(A) The director or the director's designee may send a signed  
35 statement to each water service provider that serves all or a portion of the  
36 service area of a nonmunicipal domestic sewage treatment works certifying

1 that the director finds that the nonmunicipal domestic sewage treatment  
2 works:

3 (i) Is the subject of an enforcement action by the  
4 ~~department~~ division;

5 (ii) Has not complied with the requirements of this  
6 section, including payment of the nonmunicipal domestic sewage treatment  
7 works trust fund contribution; or

8 (iii) Otherwise failed to comply with its permit.

9 (B) The ~~department~~ division shall include a legal  
10 description of the service area for the nonmunicipal domestic sewage  
11 treatment works with the signed statement under subdivision (b)(9)(A) of this  
12 section.

13 (C) Upon receipt of a signed statement that includes a  
14 legal description of the service area for the nonmunicipal domestic sewage  
15 treatment works, the water service provider shall not establish new  
16 connections or initiate service to existing connections for water service in  
17 the service area of the nonmunicipal domestic sewage treatment works as  
18 defined by the legal description.

19 (D) If the director or the director's designated  
20 representative finds that the nonmunicipal domestic sewage treatment works is  
21 no longer subject to an enforcement action or has remedied the noncompliance  
22 that formed the basis for the signed statement under subdivision (b)(9)(A) of  
23 this section, the director or the director's designated representative shall  
24 send a signed statement of the finding to each water service provider that  
25 received the prior statement.

26 (E) Upon receipt of the signed statement required under  
27 subdivision (b)(9)(D) of this section, the water service provider may resume  
28 installation of new connections or resume initiation of service to existing  
29 connections for water service.

30 (c)(1)(A)(i) All facilities that engage in land application or storage  
31 of fluids generated or utilized during exploration or production phases of  
32 oil or gas operations shall be closed in a manner that ensures protection of  
33 human health and the environment.

34 (ii) As used in this subsection, "land application  
35 or storage of fluids generated or utilized during exploration or production  
36 phases of oil or gas operations" means land farming through the controlled

1 and repeated application of drilling fluids to a soil surface or the practice  
2 of receiving and storing said fluids from offsite for waste management.

3 (iii) Surface facilities associated with Class II  
4 injection wells are specifically excluded from the requirements of this  
5 subsection.

6 (iv) Land applications at the drilling or  
7 exploration site that are authorized under any general permit issued by the  
8 ~~department~~ division are excluded from the requirements of this subsection.

9 (B) By October 1, 2009, each existing permitted facility  
10 regulated under this subsection shall submit to the ~~department~~ division the  
11 following:

12 (i) A plan to close the permitted facility and make  
13 any site restoration deemed necessary by the ~~department~~ division;

14 (ii) A detailed cost estimate to close and restore  
15 the permitted facility that meets the requirements of this subsection and is  
16 approved by the ~~department~~ division; and

17 (iii) A financial mechanism that demonstrates to the  
18 ~~department's~~ division's satisfaction the permittee's financial ability to  
19 ensure adequate closure and any necessary restoration of the permitted  
20 facility in accordance with the requirements of this subsection.

21 (C) The ~~department~~ division shall not issue, modify, or  
22 renew a permit for facilities regulated under this subsection without the  
23 permit applicant first demonstrating to the ~~department's~~ division's  
24 satisfaction the applicant's financial ability to ensure adequate closure and  
25 any necessary restoration of the permitted facility in accordance with the  
26 requirements of this subsection.

27 (D)(i) The amount of any financial assurance required  
28 under this subsection shall be equal to or greater than the detailed cost  
29 estimate for a third party to close the permitted facility in accordance with  
30 closure plans approved by the ~~department~~ division.

31 (ii) The detailed cost estimate shall be prepared by  
32 an independent professional consultant.

33 (iii) On or before August 15 of each year, a  
34 permittee shall submit to the ~~department~~ division for approval a detailed  
35 cost estimate to close and restore the permitted facility in accordance with  
36 closure plans that have been approved by the ~~department~~ division.



1 (E)(i) For new permits, the applicant shall submit to the  
2 ~~department~~ division for approval a detailed cost estimate to close and  
3 restore the facility based on the proposed operation and capacity of the  
4 facility from the date the permit is issued through the following October 1.

5 (ii) For renewal or modification applications, the  
6 permittee shall submit to the ~~department~~ division for approval a detailed  
7 cost estimate to close and restore the permitted facility based on closure  
8 plans that have been approved by the ~~department~~ division.

9 (F)(i) For each permit, the financial assurance mechanism  
10 shall be renewed on October 1 of each year.

11 (ii) For each permit, documentation that the  
12 required financial assurance mechanism has been renewed beginning October 1  
13 of that year shall be received by the ~~department~~ division by September 15 of  
14 each year or the ~~department~~ division shall initiate procedures to:

15 (a) Take possession of the funds guaranteed by  
16 the financial assurance mechanism; and

17 (b)(1) Suspend or revoke the permit under  
18 which the facility is operated.

19 (2) A permit shall remain suspended  
20 until a financial assurance mechanism is provided to the ~~department~~ division  
21 in accordance with this subsection.

22 (iii) The permittee is responsible for ensuring that  
23 documentation of annual renewal is received by the ~~department~~ division by its  
24 due date.

25 (2) The permittee or applicant shall demonstrate financial  
26 ability to adequately close or restore the land application or storage  
27 facility by:

28 (A) Obtaining insurance that specifically covers closure  
29 and restoration costs;

30 (B) Obtaining a letter of credit;

31 (C) Obtaining a bond or other surety instrument;

32 (D) Creating a trust fund or an escrow account;

33 (E) Combining any of the instruments in subdivisions

34 (c)(2)(A)-(D) of this section; or

35 (F) Any other financial instrument approved by the  
36 director.

1 (3) A financial instrument required by this subsection shall:

2 (A) Be posted to the benefit of the ~~department~~ division;

3 (B) Provide that the financial instrument cannot be  
4 canceled without sixty (60) days' prior written notice addressed to the  
5 ~~department's~~ division's legal division chief as evidenced by a signed,  
6 certified mail with a return receipt request; and

7 (C) Be reviewed by the ~~department~~ division upon receipt of  
8 the cancelation notice to determine whether to initiate procedures to revoke  
9 or suspend the facility's permit and whether to initiate procedures to take  
10 possession of the funds guaranteed by the financial assurance mechanism.

11 (4) Before the ~~department~~ division may release a financial  
12 assurance mechanism, the ~~department~~ division shall receive a certification by  
13 a professional engineer that the permitted facility has been closed and  
14 restored in accordance with closure plans that have been approved by the  
15 ~~department~~ division.

16 (5) The ~~department~~ division is not responsible for the  
17 operation, closure, or restoration of a facility regulated under this  
18 subsection.

19 (d)(1) When an application for the issuance of a new permit or a major  
20 modification of an existing permit is filed with the ~~department~~ division, the  
21 ~~department~~ division shall cause notice of the application to be published in  
22 a newspaper of general circulation in the county in which the proposed  
23 facility is to be located.

24 (2) The notice required by subdivision (d)(1) of this section  
25 shall advise that any interested person may request a public hearing on the  
26 permit application by giving the ~~department~~ division a written request within  
27 ten (10) days of the publication of the notice.

28 (3)(A) If the ~~department~~ division determines that a hearing is  
29 necessary or desires such a hearing, the ~~department~~ division shall schedule a  
30 public hearing.

31 (B)(i) If the ~~department~~ division schedules a public  
32 hearing, the ~~department~~ division shall notify the applicant and all persons  
33 who have submitted comments of the date, time, and place of the public  
34 hearing.

35 (ii) The notice shall be provided using one (1) of  
36 the following methods based on the contact information available for the

1 applicant or the person and the director's discretion:

2 (a) First class mail; or

3 (b) Email.

4 (e)(1)(A) Whenever the ~~department~~ division proposes to grant or deny  
5 any permit application, it shall cause notice of its proposed action to be  
6 published in either:

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

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

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

13 (C)(i) At the conclusion of the public comment period, the  
14 ~~department~~ division shall provide a final written permitting decision  
15 regarding the permit application.

16 (ii) The final written permitting decision shall be  
17 published on the ~~department's~~ division's website.

18 (iii) The ~~department~~ division shall provide the  
19 applicant the final permitting decision using one (1) of the following  
20 methods based on the contact information available and the director's  
21 discretion:

22 (a) First class mail; or

23 (b) Email.

24 (iv) The ~~department~~ division shall provide notice of  
25 the final permitting decision to all persons who have submitted comments  
26 using one (1) of the following methods based on the contact information  
27 available and the director's discretion:

28 (a) First class mail; or

29 (b) Email.

30 (2)(A)(i) The ~~department's~~ division's final decision shall  
31 include a response to each issue raised in any public comments received  
32 during the public comment period. The response shall manifest reasoned  
33 consideration of the issues raised by the public comments and shall be  
34 supported by appropriate legal, scientific, or practical reasons for  
35 accepting or rejecting the substance of the comment in the ~~department's~~  
36 division's permitting decision.

1 (ii) For the purposes of this section, response to  
2 comments by the ~~department~~ division should serve the roles of both developing  
3 the record for possible judicial review of an individual permitting action  
4 and as a record for the public's review of the ~~department's~~ division's  
5 technical and legal interpretations on long-range regulatory issues.

6 (iii) Nothing in this section, however, shall be  
7 construed as limiting the ~~department's~~ division's authority to raise all  
8 relevant issues of regulatory concern upon adjudicatory review of the  
9 commission of a particular permitting action.

10 (B)(i) In the case of any discharge limit, emission limit,  
11 environmental standard, analytical method, or monitoring requirements, the  
12 record of the proposed action and the response shall include a written  
13 explanation of the rationale for the proposal, demonstrating that any  
14 technical requirements or standards are based upon generally accepted  
15 scientific knowledge and engineering practices.

16 (ii) For any standard or requirement that is  
17 identical to an applicable regulation, this demonstration may be satisfied by  
18 reference to the regulation. In all other cases, the ~~department~~ division must  
19 provide its own justification with appropriate reference to the scientific  
20 and engineering literature or written studies conducted by the ~~department~~  
21 division.

22 (f)(1) All costs of publication of notices of applications and notices  
23 of proposals to grant permits under this section shall be the responsibility  
24 of the applicant.

25 (2) All costs of publication of notices of proposals to deny a  
26 permit under this section shall be the responsibility of the ~~department~~  
27 division.

28 (3) Any moneys received under this subsection shall be  
29 classified as refunds to expenditures.

30 (g) Only those persons that submit comments on the record during the  
31 public comment period and the applicant shall have standing to appeal the  
32 decision of the ~~department~~ division to the commission.

33 (h)(1) Permits for the discharge of pollutants into the waters of the  
34 state or for the prevention of pollution of the waters of the state shall  
35 remain freely transferable if the applicant for the transfer:

36 (A) Notifies the director at least thirty (30) days in

1 advance of the proposed transfer date;

2 (B) Submits a disclosure statement as required under § 8-  
3 1-106;

4 (C) Provides any replacement financial assurance required  
5 under this section; and

6 (D) Ensures that all past and currently due annual permit  
7 fees and the trust fund contribution fees for the nonmunicipal domestic  
8 sewage treatment works have been paid.

9 (2) Only the reasons stated in §§ 8-1-103(4), 8-1-106(b)(1), 8-  
10 1-106(c), and this section constitute grounds for denial of a transfer.

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

14 (i) In the event of voluminous comments, including  
15 without limitation a petition, the ~~department~~ division may require the  
16 designation of a representative to accept any notices required by this  
17 section.

18 (j) The notice provisions of subsections (d) and (e) of this section  
19 do not apply to permit transfers or minor modifications of existing permits.

20 (k) This section in no way restricts local and county government  
21 entities from enacting more stringent ordinances regulating nonmunicipal  
22 domestic treatment sewage systems in Arkansas.

23 (l) The commission may promulgate rules to establish a permit-by-rule.  
24 A permit-by-rule is subject to the public notice requirements and procedural  
25 provisions under § 8-4-202 et seq. but is not subject to the public notice  
26 requirements and procedural provisions under this section and §§ 8-4-204 and  
27 8-4-205.

28 (m)(1)(A)(i) The ~~department~~ division may issue general permits under  
29 subsection (a) of this section.

30 (ii) A general permit is a statewide permit for a  
31 category of facilities or sources that:

32 (a) Involve the same or substantially similar  
33 types of operations or activities;

34 (b) Discharge or release the same type of  
35 wastes or engage in the same type of disposal practices;

36 (c) Require the same limitations, operating

1 conditions, or standards;

2 (d) Require the same or similar monitoring  
3 requirements; and

4 (e) In the opinion of the director, may be  
5 regulated under a general permit.

6 (B)(i) Facilities or sources eligible to construct or  
7 operate under a general permit may obtain coverage by submitting a notice of  
8 intent to the ~~department~~ division.

9 (ii) The director may require a person who has been  
10 granted coverage under a general permit to apply for and obtain an individual  
11 permit.

12 (2)(A) A general permit is subject to the public notice  
13 requirements for statewide permits and the procedures under subsection (e) of  
14 this section.

15 (B) The ~~department~~ division shall pay the costs of  
16 publication of notice of a draft permitting decision to issue a general  
17 permit.

18 (C) General permit coverage is not transferable unless the  
19 general permit provides for transfer.

20 (3)(A)(i) Before the submittal to public comment of a general  
21 permit that has not been previously issued, the ~~department~~ division shall  
22 consider the economic impact and environmental benefit of the general permit  
23 and its terms and conditions upon the people of the State of Arkansas,  
24 including those entities that may apply for coverage under the general  
25 permit.

26 (ii) This requirement does not apply to general  
27 permits or terms or conditions that adopt the language of state or federal  
28 statutes or regulations without substantive change.

29 (B) If the terms and conditions of a previously issued  
30 general permit are revised upon renewal, the economic impact and  
31 environmental benefit of only the proposed changes shall be considered.

32 (C) A general permit for which costs are specifically  
33 prohibited from being considered by state or federal law or regulation is  
34 exempt from the requirements of this subsection.

35 (D) The ~~department~~ division may rely upon readily  
36 available information for its consideration of the economic impact and

1 environmental benefit of the general permit and its terms and conditions.

2 (4)(A) Only those persons that submit comments on the record  
3 during the public comment period shall have standing to appeal the decision  
4 of the ~~department~~ division to the commission.

5 (B) The final permitting decision of the ~~department~~  
6 division on the general permit is subject to a hearing before the commission  
7 under §§ 8-4-205, 8-4-212, 8-4-213, 8-4-214, and the administrative  
8 procedures promulgated by the commission.

9 (5)(A)(i) When a general permit includes an expiration date  
10 later than July 1, 2012, the ~~department~~ division shall publish the notice of  
11 intent to renew or not renew the general permit at least three hundred sixty-  
12 five (365) days before the expiration of the general permit.

13 (ii) When a general permit includes an expiration  
14 date earlier than July 1, 2012, the ~~department~~ division shall publish the  
15 notice of intent to renew or not renew the general permit as soon as  
16 reasonably possible.

17 (B) The ~~department~~ division shall publish its final  
18 permitting decision to renew or not renew the general permit at least one  
19 hundred eighty (180) days before the expiration date of the general permit.

20 (C) If the general permit expires before the final  
21 decision to renew or not renew the general permit, the terms and conditions  
22 of the general permit shall remain in effect, and all persons who obtained  
23 coverage under the general permit before its expiration shall retain coverage  
24 under the general permit until there has been a final permit decision on the  
25 general permit.

26 (D) In the event the ~~department~~ division makes a decision  
27 to not renew the general permit, existing coverage under the general permit  
28 shall continue under the terms of the expired permit until a final decision  
29 is reached for an individual permit.

30 (6)(A) If a general permit is appealed and the general permit  
31 expires before the final decision by the director or by the commission to  
32 renew or not renew the general permit, the terms and conditions of the  
33 general permit shall remain in effect.

34 (B) All persons who obtained coverage under the general  
35 permit before its expiration shall retain coverage under the general permit  
36 until there has been a final administrative decision on the general permit.

1 (C) The director shall not approve new coverage under an  
2 expired general permit for any facility for which a notice of intent was not  
3 filed before expiration of the general permit.

4 (n)(1) When an application for the issuance of a new permit for a  
5 liquid animal waste system or a modification of an existing permit for a  
6 liquid animal waste system is filed, the ~~department~~ division shall give  
7 notice of its proposed action in accordance with subdivision (e)(1)(A) of  
8 this section within one hundred twenty (120) days of receipt of the  
9 application.

10 (2)(A) At the conclusion of the public comment period, the  
11 ~~department~~ division shall announce in writing within sixty (60) days its  
12 final decision regarding the permit application in accordance with  
13 subdivision (e)(2)(A) of this section.

14 (B) For a modification that the ~~department~~ division  
15 considers to be minor in nature, the ~~department~~ division shall make its final  
16 decision regarding the permit application within thirty (30) days after  
17 receipt of the application.

18 (3) An applicant may waive in writing to the ~~department~~ division  
19 the timeliness requirement under subdivisions (n)(1) and (2) of this section.

20 (o)(1) If an application for modification of an existing state permit  
21 for a liquid animal waste management system is filed with the ~~department~~  
22 division, only those permit conditions subject to the modification are open  
23 for review.

24 (2)(A) Except as provided in subdivision (o)(2)(B) of this  
25 section, an existing state permit for a liquid animal waste management system  
26 that is in good standing is not subject to review or third-party appeal for  
27 siting or location issues that were not raised during the applicable review  
28 or appeal period at the time of permit issuance.

29 (B) Subdivision (o)(2)(A) of this section does not limit  
30 the authority of the ~~department~~ division to address or enforce a violation of  
31 permit conditions or applicable law.

32  
33 SECTION 78. The introductory language of Arkansas Code § 8-4-204,  
34 concerning permits and revocation by the Arkansas Department of Environmental  
35 Quality, is amended to read as follows:

36 8-4-204. Permits – Revocation.



1           The ~~Arkansas Department~~ Division of Environmental Quality or its  
2 successor is given and charged with the power and duty to revoke, modify, or  
3 suspend, in whole or in part, for cause any permit issued under this chapter,  
4 including without limitation:

5  
6           SECTION 79. Arkansas Code § 8-4-205(a), concerning permits, hearings  
7 upon denial, revocation, or modification of permit by the Arkansas Department  
8 of Environmental Quality, is amended to read as follows:

9           (a) Any person that is denied a permit by the Director of the ~~Arkansas~~  
10 ~~Department~~ Division of Environmental Quality or that has a permit revoked or  
11 modified or a request for permit transfer or modification denied shall be  
12 afforded an opportunity for a hearing by the Arkansas Pollution Control and  
13 Ecology Commission in connection therewith, upon written application made  
14 within thirty (30) days after service of notice of the denial, revocation, or  
15 modification.

16  
17           SECTION 80. Arkansas Code § 8-4-205(b)(1), concerning permits,  
18 hearings upon denial, revocation, or modification of permit by the Arkansas  
19 Department of Environmental Quality, is amended to read as follows:

20           (b)(1) Only those interested persons, other than the applicant, that  
21 have submitted comments on the record regarding a proposed permit action  
22 during the public comment period shall have standing to request a hearing by  
23 the commission in connection therewith, upon written application made within  
24 thirty (30) days after the date of the ~~Arkansas Department~~ Division of  
25 Environmental Quality's final decision regarding the permit action.

26  
27           SECTION 81. Arkansas Code § 8-4-206 is amended to read as follows:

28           8-4-206. State water pollution control agency – General authority.

29           (a) In addition to any other powers which it may have under this  
30 chapter or any other legislative act, the ~~Arkansas Department~~ Division of  
31 Environmental Quality is authorized and empowered to act as the "state water  
32 pollution control agency" for the State of Arkansas for the purposes of the  
33 Federal Water Pollution Control Act Amendments of 1972.

34           (b) As the state water pollution control agency, the ~~department~~  
35 division may, among other things, approve projects for the construction of  
36 disposal systems for the purposes of loans and grants from the United States

1 Environmental Protection Agency or any other federal agency and may take any  
2 other action necessary or appropriate to secure for the state the benefits of  
3 the Federal Water Pollution Control Act, as amended.

4  
5 SECTION 82. The introductory language of Arkansas Code § 8-4-207,  
6 concerning the powers and duties of the state water pollution control agency,  
7 is amended to read as follows:

8 Without limiting the generality of the provisions of this chapter or of  
9 the powers which the Director of the ~~Arkansas Department~~ Division of  
10 Environmental Quality and the Arkansas Pollution Control and Ecology  
11 Commission may have under this or any other legislative act:

12  
13 SECTION 83. Arkansas Code § 8-4-207(6)(A)(ii), concerning the powers  
14 and duties of the state water pollution control agency, is amended to read as  
15 follows:

16 (ii) However, information submitted to the ~~Arkansas~~  
17 ~~Department~~ Division of Environmental Quality may be claimed as confidential  
18 if its disclosure would divulge trade secrets.

19  
20 SECTION 84. Arkansas Code § 8-4-207(6)(B), concerning the powers and  
21 duties of the state water pollution control agency, is amended to read as  
22 follows:

23 (B) The ~~department~~ division shall deny any claim for  
24 confidentiality for the name and address of any permit applicant or permittee  
25 or for any National Pollutant Discharge Elimination System permit  
26 applications, National Pollutant Discharge Elimination System permits, and  
27 effluent data.

28  
29 SECTION 85. Arkansas Code § 8-4-207(6)(D), concerning the powers and  
30 duties of the state water pollution control agency, is amended to read as  
31 follows:

32 (D) Any person adversely affected by a determination by  
33 the ~~department~~ division on a claim of confidentiality may appeal the  
34 determination as provided in §§ 8-4-222 and 8-4-223.

35  
36 SECTION 86. Arkansas Code § 8-4-208 is amended to read as follows:

1           8-4-208. State water pollution control agency – Administration of  
2 permit program generally.

3           (a) The ~~Arkansas Department~~ Division of Environmental Quality is  
4 authorized, subject to the approval of the Governor, to administer on behalf  
5 of the state its own permit program for discharges into navigable waters  
6 within its jurisdiction in lieu of that of the United States Environmental  
7 Protection Agency. The ~~department~~ division is also authorized to submit to  
8 the Administrator of the United States Environmental Protection Agency for  
9 approval a full and complete description of the program which the ~~department~~  
10 division proposes to establish and administer under state law, as provided by  
11 § 402(b) of the Federal Water Pollution Control Act Amendments of 1972, 33  
12 U.S.C. § 1342(b). To that end, the ~~department~~ division and the Arkansas  
13 Pollution Control and Ecology Commission are vested with all necessary  
14 authority and power to meet the requirements of § 402(b) of the Federal Water  
15 Pollution Control Act Amendments of 1972, 33 U.S.C. § 1342(b), and the  
16 guidelines promulgated by the United States Environmental Protection Agency  
17 pursuant to § 304(h)(2) of the Federal Water Pollution Control Act Amendments  
18 of 1972, 33 U.S.C. § 1314(h), to engage in an approved continuing planning  
19 process under § 303(e) of the Federal Water Pollution Control Act Amendments  
20 of 1972, 33 U.S.C. § 1313(e), and to perform any and all acts necessary to  
21 carry out the purposes and requirements of the Federal Water Pollution  
22 Control Act Amendments of 1972 relating to this state's participation in the  
23 National Pollutant Discharge Elimination System established under the Federal  
24 Water Pollution Control Act Amendments of 1972, subject to all restrictions  
25 contained in the Federal Water Pollution Control Act Amendments of 1972 and  
26 guidelines.

27           (b) The ~~department~~ division shall further have the authority to accept  
28 a delegation of authority from the Administrator of the United States  
29 Environmental Protection Agency under the Federal Water Pollution Control Act  
30 Amendments of 1972 and to exercise and enforce the authority delegated.

31           (c) Any public hearing that may be held by the Director of the  
32 ~~Arkansas Department~~ Division of Environmental Quality preliminary to acting  
33 on a permit application as required by the Federal Water Pollution Control  
34 Act Amendments of 1972 and guidelines, unless otherwise designated in the  
35 notice of hearing, shall be for informational purposes only and shall not be  
36 deemed a hearing before the commission within the meaning of § 8-4-205. No

1 appeal may be taken therefrom.

2  
3 SECTION 87. Arkansas Code § 8-4-209 is amended to read as follows:

4 8-4-209. State water pollution control agency – Participation of  
5 certain persons prohibited in approval of permit applications.

6 Any provision of state law to the contrary notwithstanding, no member  
7 of the ~~Arkansas Department~~ Division of Environmental Quality or the Arkansas  
8 Pollution Control and Ecology Commission or other state agency who receives  
9 or has during the previous two (2) years received a significant portion of  
10 his or her income directly or indirectly from permit holders or applicants  
11 for a permit shall participate in the approval of the National Pollutant  
12 Discharge Elimination System permit applications or portions thereof.

13  
14 SECTION 88. Arkansas Code § 8-4-210(e), concerning investigations and  
15 hearings by the Arkansas Pollution Control and Ecology Commission, is amended  
16 to read as follows:

17 (e) In accordance with the powers set forth in subsections (a)-(d) of  
18 this section, the commission is authorized to conduct adjudicatory hearings  
19 providing an aggrieved person with standing a forum for contesting any  
20 decision of the ~~Arkansas Department~~ Division of Environmental Quality. For  
21 the purposes of such hearings, the commission's jurisdiction shall be  
22 construed as including all regulatory programs vested with the ~~department~~  
23 division.

24  
25 SECTION 89. Arkansas Code § 8-4-211(a), concerning delcaratory orders  
26 by the Arkansas Pollution Control and Ecology Commission is amended to read  
27 as follows:

28 (a) Any permittee or person subject to regulation may petition the  
29 Arkansas Pollution Control and Ecology Commission for a declaratory order as  
30 to the application of any rule, statute, permit, or order enforced by the  
31 ~~Arkansas Department~~ Division of Environmental Quality or the commission.

32  
33 SECTION 90. Arkansas Code § 8-4-212(a), concerning orders and  
34 adjudicatory hearings by the Arkansas Department of Environmental Quality and  
35 the Arkansas Pollution Control and Ecology Commission, is amended to read as  
36 follows:

1 (a) No final order resolving a contested decision of the ~~Arkansas~~  
 2 ~~Department~~ Division of Environmental Quality shall be issued until the  
 3 Arkansas Pollution Control and Ecology Commission has provided aggrieved  
 4 persons that have standing the opportunity for an adjudicatory hearing upon  
 5 the matter.

6  
 7 SECTION 91. Arkansas Code § 8-4-215 is amended to read as follows:  
 8 8-4-215. Intergovernmental cooperation.

9 (a) The ~~Arkansas Department~~ Division of Environmental Quality or its  
 10 successor and the Arkansas Pollution Control and Ecology Commission, so far  
 11 as it is not inconsistent with its duties under the laws of this state, may  
 12 assist and cooperate with any agency of another state or the United States in  
 13 any matter relating to water pollution control.

14 (b)(1) The commission or the ~~department~~ division may receive and  
 15 accept money, property, or services from any person or from any agency  
 16 described in subsection (a) of this section or from any other source for any  
 17 water pollution control purpose within the scope of its functions under this  
 18 chapter.

19 (2) All moneys so received shall be used for the operation and  
 20 activities of the commission or ~~department~~ division and for no other  
 21 purposes.

22 (c)(1) The ~~department~~ division or its successor may enter into  
 23 agreements with the responsible authorities of the United States or other  
 24 states, subject to approval by the Governor, relative to policies, methods,  
 25 means, and procedures to be employed to control pollution of any interstate  
 26 waters and may carry out these agreements by appropriate general and special  
 27 orders.

28 (2)(A) This power shall not be deemed to extend to the  
 29 modification of any agreement with any other state concluded by direct  
 30 legislative act.

31 (B) However, unless otherwise provided, the ~~department~~  
 32 division shall be the agency for the administration and enforcement of any  
 33 such legislative agreement.

34  
 35 SECTION 92. Arkansas Code § 8-4-216 is amended to read as follows  
 36 8-4-216. Information and inspections.

1 (a) The owner or operator of or any contributor of sewage, industrial  
2 wastes, or other wastes to any disposal system or an industrial user of a  
3 publicly owned treatment system, when requested by the Director of the  
4 ~~Arkansas Department~~ Division of Environmental Quality, shall furnish to the  
5 ~~Arkansas Department~~ Division of Environmental Quality any information that is  
6 relevant to the subject of this chapter. The owner or operator shall  
7 establish and maintain such records, make such reports, install, use, and  
8 maintain such monitoring equipment or methods, including, when appropriate,  
9 biological monitoring methods, sample such effluents, and provide such other  
10 information as the director may reasonably require.

11 (b) The ~~department~~ division or any authorized employee or agent of the  
12 ~~department~~ division may examine and copy any book, papers, records, or  
13 memoranda pertaining to the operation of a disposal system.

14 (c) Whenever it shall be necessary for the purpose of this chapter,  
15 the ~~department~~ division or any authorized member, employee, or agent of the  
16 ~~department~~ division may enter upon any public or private property for the  
17 purpose of obtaining information or conducting surveys or investigations.  
18

19 SECTION 93. Arkansas Code § 8-4-217(a)(3), concerning unlawful actions  
20 under the laws of the Arkansas Pollution Control and Ecology Commission and  
21 the Arkansas Department of Environmental Quality, is amended to read as  
22 follows:

23 (3) Violate any provisions of this chapter or of any rule,  
24 regulation, or order adopted by the Arkansas Pollution Control and Ecology  
25 Commission under this chapter or of a permit issued under this chapter by the  
26 ~~Arkansas Department~~ Division of Environmental Quality;  
27

28 SECTION 94. The introductory language of Arkansas Code § 8-4-  
29 217(a)(6)(A)(iii), concerning unlawful actions under the laws of the Arkansas  
30 Pollution Control and Ecology Commission and the Arkansas Department of  
31 Environmental Quality, is amended to read as follows:

32 (iii) A substance the ~~department~~ division excludes  
33 from the phosphorus limitations of this section based on a finding that  
34 compliance with this section would:  
35

36 SECTION 95. The introductory language of Arkansas Code § 8-4-

1 217(b)(1), concerning unlawful actions under the laws of the Arkansas  
2 Pollution Control and Ecology Commission and the Arkansas Department of  
3 Environmental Quality, is amended to read as follows:

4 (b)(1) It shall be unlawful for any person to engage in any of the  
5 following acts without having first obtained a written permit from the  
6 ~~department~~ division:

7  
8 SECTION 96. Arkansas Code § 8-4-217(b)(2), concerning unlawful actions  
9 under the laws of the Arkansas Pollution Control and Ecology Commission and  
10 the Arkansas Department of Environmental Quality, is amended to read as  
11 follows:

12 (2) The ~~department~~ division may require the submission of such  
13 plans, specifications, and other information as it deems relevant in  
14 connection with the issuance of disposal permits.

15  
16 SECTION 97. Arkansas Code § 8-4-218(a), concerning the notice of  
17 violations, orders, rules, and hearings by the Arkansas Department of  
18 Environmental Quality, is amended to read as follows:

19 (a) Whenever the ~~Arkansas Department~~ Division of Environmental Quality  
20 or its successor determines that there are reasonable grounds to believe that  
21 there has been a violation of any of the provisions of this chapter or any  
22 order, rule, or regulation of the Arkansas Pollution Control and Ecology  
23 Commission, it may give written notice to the alleged violator specifying the  
24 causes of complaint.

25  
26 SECTION 98. Arkansas Code § 8-4-220(a), concerning an order of the  
27 Arkansas Department of Environmental Quality without a hearing in an  
28 emergency, is amended to read as follows:

29 (a) When the ~~Arkansas Department~~ Division of Environmental Quality or  
30 its successor finds that an emergency exists requiring immediate action to  
31 protect the public health or welfare it may, without notice or hearing, issue  
32 an order reciting the existence of such emergency and requiring that such  
33 action be taken as it deems necessary to meet the emergency.

34  
35 SECTION 99. Arkansas Code § 8-4-230(a), concerning temporary variances  
36 and interim authority granted by the Director of the Department of

1 Environmental Quality, is amended to read as follows:

2 (a)(1) Unless otherwise expressly prohibited by federal law, the  
3 Director of the ~~Arkansas Department~~ Division of Environmental Quality may,  
4 for compelling reasons and good cause shown, grant:

5 (A) A temporary variance from the requirements of a permit  
6 issued by the ~~Arkansas Department~~ Division of Environmental Quality; or

7 (B) Interim authority to construct or operate during the  
8 application review and permit issuance process.

9 (2) Such temporary variances or interim authority shall not  
10 exceed a period of ninety (90) days, except when a longer period is justified  
11 by circumstances beyond the applicant's control. The ~~department~~ division may  
12 grant a request for an extension of a temporary variance or interim authority  
13 at any time prior to the expiration date.

14 (3) The ~~department~~ division may require an initial processing  
15 fee of two hundred dollars (\$200) for a request for a temporary variance or  
16 an interim authority request. This fee shall not be required for requests for  
17 an extension of any temporary variance or interim authority.

18  
19 SECTION 100. Arkansas Code § 8-4-230(e)(1), concerning temporary  
20 variances and interim authority granted by the Director of the Department of  
21 Environmental Quality, is amended to read as follows:

22 (e)(1) The director's decision to grant or deny a temporary variance  
23 or interim authority to construct or operate shall be issued within ten (10)  
24 days of receipt of the request for the temporary variance or interim  
25 authority and shall be publicly noticed in a newspaper of general circulation  
26 in the state within five (5) business days of the director's decision. The  
27 applicant shall be responsible for the expense of the publication of a  
28 decision to grant a temporary variance or interim authority. The ~~department~~  
29 division shall be responsible for the expense of the publication of a  
30 decision to deny a temporary variance or interim authority.

31  
32 SECTION 101. Arkansas Code § 8-4-232(b)(2)(E), concerning nutrient  
33 water quality trading programs, is amended to read as follows:

34 (E)(i) The establishment of a schedule of user fees to be  
35 collected by the ~~Arkansas Department~~ Division of Environmental Quality from  
36 persons or entities utilizing nutrient water quality trades or offsets to



1 comply with permit limits.

2 (ii) The user fees shall be based on a record  
3 calculating the reasonable costs to the ~~department~~ division of implementing  
4 and enforcing each nutrient water quality trading, credit, or offset program.  
5

6 SECTION 102. The introductory language of Arkansas Code § 8-4-232(c),  
7 concerning nutrient water quality trading programs, is amended to read as  
8 follows:

9 (c) Under regulations adopted by the commission under subsection (b)  
10 of this section, the ~~department~~ division may:  
11

12 SECTION 103. Arkansas Code § 8-4-233(f), concerning the creation,  
13 members, and duties of the Nutrient Water Quality Trading Advisory Panel, is  
14 amended to read as follows:

15 (f) The ~~Arkansas Department~~ Division of Environmental Quality shall  
16 provide meeting space and administrative services for the panel.  
17

18 SECTION 104. Arkansas Code § 8-4-233(g)(1), concerning the creation,  
19 members, and duties of the Nutrient Water Quality Trading Advisory Panel, is  
20 amended to read as follows:

21 (1) Advise the ~~department~~ division and the Arkansas Natural  
22 Resources Commission regarding the desirability, design, and operation of  
23 nutrient water quality trading programs; and  
24

25 SECTION 105. The introductory language of Arkansas Code § 8-4-  
26 234(a)(1), concerning short-term activity authorization by the Director of  
27 the Arkansas Department of Environmental Quality, is amended to read as  
28 follows:

29 (a)(1) The Director of the ~~Arkansas Department~~ Division of  
30 Environmental Quality may authorize short-term activities that have potential  
31 to affect compliance with Arkansas water quality standards if:  
32

33 SECTION 106. Arkansas Code § 8-4-234(b)(1), concerning short-term  
34 activity authorization by the Director of the Arkansas Department of  
35 Environmental Quality, is amended to read as follows:

36 (b)(1) The ~~Arkansas Department~~ Division of Environmental Quality may

1 collect a processing fee for a short-term activity authorization.

2  
3 SECTION 107. Arkansas Code § 8-4-234(b)(4)(A), concerning short-term  
4 activity authorization by the Director of the Arkansas Department of  
5 Environmental Quality, is amended to read as follows:

6 (4)(A) The ~~department~~ division shall enter into an agreement  
7 with a state agency, board, or commission or municipality, city, or county  
8 that creates an alternative payment structure in lieu of fees authorized  
9 under subdivision (b)(2) of this section.

10  
11 SECTION 108. Arkansas Code § 8-4-234(b)(4)(B)(ii), concerning short-  
12 term activity authorization by the Director of the Arkansas Department of  
13 Environmental Quality, is amended to read as follows:

14 (ii) A process under which the ~~department~~ division  
15 provides notice to the state agency, board, or commission or municipality,  
16 city, or county of planned actions under this section that affect the state  
17 agency, board, or commission or municipality, city, or county.

18  
19 SECTION 109. Arkansas Code § 8-4-234(b)(5), concerning short-term  
20 activity authorization by the Director of the Arkansas Department of  
21 Environmental Quality, is amended to read as follows:

22 (5) The ~~department~~ division shall waive twenty-five percent  
23 (25%) of a fee assessed under this section to a state agency, board, or  
24 commission or municipality, city, or county in a fiscal year.

25  
26 SECTION 110. The introductory language of Arkansas Code § 8-4-  
27 234(c)(2), concerning short-term activity authorization by the Director of  
28 the Arkansas Department of Environmental Quality, is amended to read as  
29 follows:

30 (2) A state agency, board, or commission or municipality, city,  
31 or county that submits a request for a waiver of the short-term activity  
32 authorization fee under subdivision (c)(1) of this section shall provide the  
33 ~~department~~ division:

34  
35 SECTION 111. Arkansas Code § 8-4-303(8) and (9), concerning the  
36 definitions of "department" and "director" under the laws regarding air

1 pollution, are repealed.

2 ~~(8) "Department" means the Arkansas Department of Environmental~~  
3 ~~Quality or its successor;~~

4 ~~(9) "Director" means the Director of the Arkansas Department of~~  
5 ~~Environmental Quality or its successor;~~

6  
7 SECTION 112. Arkansas Code § 8-4-303(14), concerning the definition of  
8 "state implementation plan" under the laws regarding air pollution, is  
9 amended to read as follows:

10 (14) "State implementation plan" means a plan that specifies  
11 measures to be used in the implementation of the state's duties under the  
12 Clean Air Act, 42 U.S.C. § 7401 et seq., and that is developed by the  
13 ~~department~~ division and submitted to the United States Environmental  
14 Protection Agency for review and approval.

15  
16 SECTION 113. Arkansas Code § 8-4-307 is amended to read as follows:

17 8-4-307. Private rights unchanged.

18 (a) Persons other than the state or the ~~Arkansas Department~~ Division  
19 of Environmental Quality shall not acquire actionable right by virtue of this  
20 subchapter. The basis for proceedings that result from violation of any  
21 standard, rule, or regulation promulgated by the Arkansas Pollution Control  
22 and Ecology Commission shall inure solely to and shall be for the benefit of  
23 the people of the state generally, and it is not intended to create in any  
24 way new rights or to enlarge existing rights or to abrogate existing private  
25 rights.

26 (b) A determination by the ~~department~~ division that air pollution or  
27 air contamination exists or that any standard, rule, or regulation has been  
28 violated, whether or not a proceeding or action is brought by the state,  
29 shall not create, by reason thereof, any presumption of law or finding of  
30 fact that shall inure to or be for the benefit of any person other than the  
31 state.

32  
33 SECTION 114. Arkansas Code § 8-4-308(a)(1)(A), concerning confidential  
34 industrial secrets obtained by the Arkansas Department of Environmental  
35 Quality and the Arkansas Pollution Control and Ecology Commission, is amended  
36 to read as follows:

1 (a)(1)(A) Any information that constitutes a trade secret under § 4-  
2 75-601 et seq. that is obtained by the employees of the Department of Energy  
3 and Environment, Arkansas Department the Division of Environmental Quality,  
4 or the Arkansas Pollution Control and Ecology Commission ~~or its employees~~ in  
5 the administration of this chapter shall be kept confidential, except for  
6 emission data that is submitted to the state, local agency, or the United  
7 States Environmental Protection Agency, which is otherwise obtained by any of  
8 those agencies pursuant to the Clean Air Act.

9  
10 SECTION 115. Arkansas Code § 8-4-309 is amended to read as follows:

11 8-4-309. Construction limited – Exception.

12 (a) Nothing contained in this subchapter shall be construed as  
13 amending or repealing § 20-21-201 et seq. concerning the control of radiation  
14 or as granting to the ~~Arkansas Department~~ Division of Environmental Quality  
15 or the Arkansas Pollution Control and Ecology Commission any jurisdiction or  
16 authority with respect to air conditions existing solely within the property  
17 boundaries of any plant, works, or shop or with respect to employer-employee  
18 relationships as to health and safety hazards.

19 (b) Notwithstanding the preceding limitation, the ~~department~~ division  
20 and the commission shall have jurisdiction and authority over air conditions  
21 associated with the removal, encapsulation, enclosure, transportation, or  
22 disposal of asbestos-containing material regardless of whether such removal,  
23 encapsulation, enclosure, transportation, or disposal is conducted within the  
24 property boundaries of any plant, works, or shop.

25  
26 SECTION 116. Arkansas Code § 8-4-310(a)(2), concerning unlawful  
27 actions regarding air pollution, is amended to read as follows:

28 (2) To construct, install, use, or operate any source capable of  
29 emitting air contaminants without having first obtained a permit to do so, if  
30 required by the regulations of the Arkansas Pollution Control and Ecology  
31 Commission, or to do so contrary to the provisions of any permit issued by  
32 the ~~Arkansas Department~~ Division of Environmental Quality or after any such  
33 permit has been suspended or revoked; or

34  
35 SECTION 117. The introductory language of Arkansas Code § 8-4-311(a),  
36 concerning the powers and duties of the Arkansas Department of Environmental

1 Quality, is amended to read as follows:

2 (a) The ~~Arkansas Department~~ Division of Environmental Quality or its  
3 successor shall have the power to:

4

5 SECTION 118. Arkansas Code § 8-4-311(a)(9)(B), concerning the powers  
6 and duties of the Arkansas Department of Environmental Quality, is amended to  
7 read as follows:

8 (B) The ~~department~~ division is designated as the official  
9 state air pollution control agency for such purposes;

10

11 SECTION 119. Arkansas Code § 8-4-311(a)(12), concerning the powers and  
12 duties of the Arkansas Department of Environmental Quality, is amended to  
13 read as follows:

14 (12) Exercise all of the powers in the control of air pollution  
15 granted to the ~~department~~ division for the control of water pollution under  
16 §§ 8-4-101 – 8-4-106 and 8-4-201 – 8-4-229; and

17

18 SECTION 120. Arkansas Code § 8-4-311(b)(1)(A), concerning the powers  
19 and duties of the Arkansas Department of Environmental Quality, is amended to  
20 read as follows:

21 (1)(A) Promulgate rules and regulations for implementing the  
22 substantive statutes charged to the ~~department~~ division for administration.

23

24 SECTION 121. Arkansas Code § 8-4-311(b)(3) and (4), concerning the  
25 powers and duties of the Arkansas Department of Environmental Quality, are  
26 amended to read as follows:

27 (3) Promulgate rules and regulations governing administrative  
28 procedures for challenging or contesting ~~department~~ division actions;

29 (4) In the case of permitting or grants decisions, provide the  
30 right to appeal a permitting or grants decision rendered by the Director of  
31 the ~~Arkansas Department~~ Division of Environmental Quality or his or her  
32 delegatee;

33

34 SECTION 122. Arkansas Code § 8-4-311(b)(7), concerning the owers and  
35 duties of the Arkansas Department of Environmental Quality, is amended to  
36 read as follows:

1           (7) Make recommendations to the director regarding overall  
2 policy and administration of the ~~department~~ division, provided, however, that  
3 the director shall always remain within the plenary authority of the  
4 Governor;

5  
6           SECTION 123. Arkansas Code § 8-4-311(b)(10)(A), concerning the powers  
7 and duties of the Arkansas Department of Environmental Quality, is amended to  
8 read as follows:

9           (10)(A) Adopt, after notice and public hearing, reasonable and  
10 nondiscriminatory rules and regulations, including requiring a permit or  
11 other regulatory authorization from the ~~department~~ division, before any  
12 equipment causing the issuance of air contaminants may be built, erected,  
13 altered, replaced, used, or operated, except in the case of repairs or  
14 maintenance of equipment for which a permit has been previously used, and  
15 revoke or modify any permit issued under this chapter or deny any permit when  
16 it is necessary, in the opinion of the ~~department~~ division, to prevent,  
17 control, or abate air pollution.

18  
19           SECTION 124. Arkansas Code § 8-4-311(b)(10)(D), concerning the powers  
20 and duties of the Arkansas Department of Environmental Quality, is amended to  
21 read as follows:

22           (D) Any person that is denied a permit by the ~~department~~  
23 division or that has such permit revoked or modified shall be afforded an  
24 opportunity for a hearing in connection therewith upon written application  
25 made within thirty (30) days after service of notice of such denial,  
26 revocation, or modification.

27  
28           SECTION 125. Arkansas Code § 8-4-311(b)(10)(F)(i), concerning the  
29 powers and duties of the Arkansas Department of Environmental Quality, is  
30 amended to read as follows:

31           (F)(i) An applicant or permit holder that has had a  
32 complete application for a permit or for a modification of a permit pending  
33 longer than the time specified in the state regulations promulgated pursuant  
34 to Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. § 7661 et seq.,  
35 or any person that participated in the public participation process, and any  
36 other person that could obtain judicial review of such actions under state

1 laws, may petition the commission for relief from ~~department~~ division  
2 inaction.

3  
4 SECTION 126. Arkansas Code § 8-4-311(b)(10)(F)(iii), concerning the  
5 powers and duties of the Arkansas Department of Environmental Quality, is  
6 amended to read as follows:

7 (iii) For the purposes of judicial review, either a  
8 commission denial or the failure of the ~~department~~ division to render a final  
9 decision within thirty (30) days after the commission has granted a petition  
10 shall constitute final agency action;

11  
12 SECTION 127. The introductory language of Arkansas Code § 8-4-312,  
13 concerning factors in exercise of powers by the Arkansas Department of  
14 Environmental Quality and the Arkansas Pollution Control and Ecology  
15 Commission, is amended to read as follows:

16 In exercising their powers and responsibilities under this chapter, the  
17 ~~Arkansas Department~~ Division of Environmental Quality and the Arkansas  
18 Pollution Control and Ecology Commission shall take into account and give  
19 consideration to the following factors:

20  
21 SECTION 128. Arkansas Code § 8-4-312(16), concerning factors in  
22 exercise of powers by the Arkansas Department of Environmental Quality and  
23 the Arkansas Pollution Control and Ecology Commission, is amended to read as  
24 follows:

25 (16) Other factors that the ~~department~~ division or the  
26 commission may find applicable.

27  
28 SECTION 129. Arkansas Code § 8-4-313(b)(1), concerning variance from  
29 regulations by the Arkansas Pollution Control and Ecology Commission, is  
30 amended to read as follows:

31 (b)(1) Any person seeking a variance shall do so by filing a petition  
32 for a variance with the Director of the ~~Arkansas Department~~ Division of  
33 Environmental Quality.

34  
35 SECTION 130. Arkansas Code § 8-4-314(b)(4), concerning the creation of  
36 the Compliance Advisory Panel, is amended to read as follows:

1           (4) One (1) member selected by the Director of the ~~Arkansas~~  
2 ~~Department~~ Division of Environmental Quality who shall serve as a nonvoting  
3 member except when his or her vote is needed to break a tie vote.  
4

5           SECTION 131. Arkansas Code § 8-4-316(b)(1) and (2), concerning open  
6 burning of storm debris, are amended to read as follows:

7           (B)(1) Open burning shall be:

8                   (A) Limited to no more than four (4) sites per county as  
9 designated by the county judge and pre-authorized by the ~~Arkansas Department~~  
10 Division of Environmental Quality; and

11                   (B) Reported in writing to the ~~department~~ division at  
12 least three (3) days before the commencement of any open burning, unless the  
13 reporting is waived by the Director of the ~~Arkansas Department~~ Division of  
14 Environmental Quality.

15           (2)(A) For an initial or subsequent request for open burning,  
16 the ~~department~~ division shall consider a maximum of four (4) sites pre-  
17 authorized for open burning if the ~~department~~ division receives a signed  
18 letter from the county judge certifying that the open burning sites pre-  
19 authorized under subdivision (b)(1) of this section have not been materially  
20 altered since the initial request.

21                   (B) If the director determines that the scope of the  
22 disaster warrants additional open burning sites, then the director may  
23 authorize additional open burning sites.  
24

25           SECTION 132. Arkansas Code § 8-4-316(f), concerning open burning of  
26 storm debris, is amended to read as follows:

27           (f) The ~~department~~ division may recommend alternative methods of  
28 vegetative storm debris disposal, including the use of air curtain  
29 incinerators or composting to the extent allowed under federal law.  
30

31           SECTION 133. Arkansas Code § 8-4-317(a), concerning state  
32 implementation plans, is amended to read as follows:

33           (a) In developing and implementing a state implementation plan, the  
34 ~~Arkansas Department~~ Division of Environmental Quality shall consider and take  
35 into account the factors specified in § 8-4-312 and the Clean Air Act, 42  
36 U.S.C. § 7401 et seq., as applicable.



1  
2 SECTION 134. Arkansas Code § 8-4-317(b)(1)(A), concerning state  
3 implementation plans, is amended to read as follows:

4 (b)(1)(A) Whenever the ~~department~~ division proposes to finalize a  
5 state implementation plan submittal for review and approval by the United  
6 States Environmental Protection Agency, it shall cause notice of its proposed  
7 action to be published in a newspaper of general circulation in the state.  
8

9 SECTION 135. Arkansas Code § 8-4-317(b)(1)(C)(ii), concerning state  
10 implementation plans, is amended to read as follows:

11 (ii) For any standard or requirement that is  
12 identical to the applicable Arkansas Pollution Control and Ecology Commission  
13 regulation or federal regulation, the demonstration required under  
14 subdivision (b)(1)(C)(i) of this section may be satisfied by reference to the  
15 regulation. In all other cases, the ~~department~~ division shall provide its own  
16 justification with appropriate reference to the scientific and engineering  
17 literature considered or the written studies conducted by the ~~department~~  
18 division.  
19

20 SECTION 136. Arkansas Code § 8-4-317(b)(2), concerning state  
21 implementation plans, is amended to read as follows:

22 (2)(A) At the conclusion of the public comment period and before  
23 transmittal to the Governor for submittal to the United States Environmental  
24 Protection Agency, the ~~department~~ division shall provide written notice of  
25 its final decision regarding the state implementation plan submittal to all  
26 persons who submitted public comments.

27 (B)(i) The ~~department's~~ division's final decision shall  
28 include a response to each issue raised in any public comments received  
29 during the public comment period. The response shall manifest reasoned  
30 consideration of the issues raised by the public comments and shall be  
31 supported by appropriate legal, scientific, or practical reasons for  
32 accepting or rejecting the substance of the comment in the ~~department's~~  
33 division's final decision.

34 (ii) For the purposes of this section, response to  
35 comments by the ~~department~~ division should serve the roles of both developing  
36 the record for possible judicial review of a state implementation plan

1 decision and serving as a record for the public's review of the ~~department's~~  
2 division's technical and legal interpretations on long-range regulatory  
3 issues.

4 (iii) This section does not limit the ~~department's~~  
5 division's authority to raise all relevant issues of regulatory concern upon  
6 adjudicatory review by the commission of a particular state implementation  
7 plan decision.

8  
9 SECTION 137. Arkansas Code § 8-4-317(c), concerning state  
10 implementation plans, is amended to read as follows:

11 (c)(1) Only those persons that submit comments on the record during  
12 the public comment period have standing to appeal the final decision of the  
13 ~~department~~ division to the commission upon written application made within  
14 thirty (30) days after service of the notice under subdivision (b)(2)(A) of  
15 this section.

16 (2) An appeal under subdivision (c)(1) of this section shall be  
17 processed as a permit appeal under § 8-4-205. However, the decision of the  
18 Director of the ~~Arkansas Department~~ Division of Environmental Quality shall  
19 remain in effect during the appeal.

20  
21 SECTION 138. Arkansas Code § 8-4-318(a)(1), concerning implementation  
22 of the National Ambient Air Quality Standards, is amended to read as follows:

23 (a)(1) The ~~Arkansas Department~~ Division of Environmental Quality shall  
24 develop NAAQS state implementation plans.

25  
26 SECTION 139. Arkansas Code § 8-4-318(b)(2), concerning implementation  
27 of the National Ambient Air Quality Standards, is amended to read as follows:

28 (2) Except as required for the permitting of major source  
29 construction under Part C or D of Title I of the Clean Air Act, 42 U.S.C. §  
30 7470 et seq. or 42 U.S.C. § 7501 et seq., or otherwise voluntarily proposed  
31 and agreed to by the owner or operator of a stationary source, the ~~department~~  
32 division shall not mandate for any stationary source measures for the  
33 attainment and maintenance of a National Ambient Air Quality Standard until  
34 such measures are included in the applicable NAAQS state implementation plan  
35 and the NAAQS state implementation plan has been submitted to the United  
36 States Environmental Protection Agency. However, this subdivision (b)(2) does

1 not limit or delay the effectiveness of any applicable emission limit or  
2 standard promulgated by the United States Environmental Protection Agency  
3 under §§ 111, 112, or 129 of the Clean Air Act, 42 U.S.C. § 7411, 42 U.S.C.  
4 § 7412, or 42 U.S.C. § 7429.

5  
6 SECTION 140. The introductory language of Arkansas Code § 8-4-  
7 318(b)(3), concerning implementation of the National Ambient Air Quality  
8 Standards, is amended to read as follows:

9 (3) Unless otherwise voluntarily proposed and agreed to by the  
10 owner or operator of a stationary source, the ~~department~~ division shall not  
11 require or consider air dispersion modeling of an air contaminant for which a  
12 National Ambient Air Quality Standard has been established in air permitting  
13 decisions for stationary sources except:

14  
15 SECTION 141. Arkansas Code § 8-4-318(b)(3)(B), concerning  
16 implementation of the National Ambient Air Quality Standards, is amended to  
17 read as follows:

18 (B) If necessary in the judgment of the ~~department~~  
19 division, with respect to permitting of a temporary source under 42 U.S.C. §  
20 7661c(e); or

21  
22 SECTION 142. The introductory language of Arkansas Code § 8-4-318(c),  
23 concerning implementation of the National Ambient Air Quality Standards, is  
24 amended to read as follows:

25 (c) This section does not prohibit the ~~department~~ division from  
26 conducting and considering air dispersion modeling as necessary for the:

27  
28 SECTION 143. Arkansas Code § 8-5-201(2), concerning the definition of  
29 "department" under the laws governing wastewater treatment plants, is  
30 repealed.

31 ~~(2) "Department" means the Arkansas Department of Environmental~~  
32 ~~Quality or its successor;~~

33  
34 SECTION 144. Arkansas Code § 8-5-201(3) and (4), concerning the  
35 definitions of "license" and "licensing committee" under the laws governing  
36 wastewater treatment plants, are amended to read as follows:

1           (3) "License" means a certificate of competency issued by the  
2 ~~department~~ Division of Environmental Quality to operators who have met the  
3 requirements of the licensing program;

4           (4) "Licensing committee" means the committee of operators and  
5 technicians established in this subchapter to assist and advise the  
6 ~~department~~ division in the examining and licensing of operators;

7  
8           SECTION 145. Arkansas Code § 8-5-202(b) and (c), concerning penalties  
9 and injunctions under the laws governing wastewater treatment plants, are  
10 amended to read as follows:

11           (b) Any violation of this subchapter shall be subject to injunction  
12 proceedings brought by the ~~Arkansas Department~~ Division of Environmental  
13 Quality in a court of competent jurisdiction.

14           (c) A violation of any provision of this subchapter or of any rule or  
15 regulation promulgated under this subchapter is grounds for an administrative  
16 revocation or suspension of the operator's license by the ~~department~~  
17 division.

18  
19           SECTION 146. Arkansas Code § 8-5-203 is amended to read as follows:  
20 8-5-203. Unlawful actions.

21           It shall be unlawful for any municipality, governmental subdivision,  
22 public or private corporation, or other person to operate a public or private  
23 wastewater treatment plant unless the competency of the operator is duly  
24 licensed by the ~~Arkansas Department~~ Division of Environmental Quality under  
25 the provisions of this subchapter. It shall further be unlawful for any  
26 person to perform the duties of an operator of any such wastewater treatment  
27 plant without being duly licensed under this subchapter.

28  
29           SECTION 147. Arkansas Code § 8-5-204(a)(1), concerning the creation of  
30 a wastewater treatment facility licensing committee, is amended to read as  
31 follows:

32           (a)(1) There is created and established a licensing committee to  
33 advise and assist the Arkansas Pollution Control and Ecology Commission and  
34 the ~~Arkansas Department~~ Division of Environmental Quality in the  
35 administration of the licensing program.

36

1 SECTION 148. Arkansas Code § 8-5-204(a)(2)(D), concerning the creation  
2 of a wastewater treatment facility licensing committee, is amended to read as  
3 follows:

4 (D) One (1) member shall be the Director of the ~~Arkansas~~  
5 ~~Department~~ Division of Environmental Quality or a qualified member of his or  
6 her staff who shall act as executive secretary of the committee.

7  
8 SECTION 149. The introductory language of Arkansas Code § 8-5-205(a),  
9 concerning the powers and duties of the Arkansas Department of Environmental  
10 Quality, is amended to read as follows:

11 (a) The ~~Arkansas Department~~ Division of Environmental Quality or its  
12 successor shall be charged with the responsibility of administering and  
13 enforcing this subchapter, with the advice and assistance of the licensing  
14 committee, and is given and charged with the following powers and duties:

15  
16 SECTION 150. Arkansas Code § 8-5-206(b), concerning classification of  
17 wastewater treatment plants, is amended to read as follows:

18 (b) The ~~Arkansas Department~~ Division of Environmental Quality shall  
19 license persons as to their qualifications to supervise successfully the  
20 proper operation of wastewater treatment plants within classifications based  
21 on the recommendations of the licensing committee.

22  
23 SECTION 151. Arkansas Code § 8-5-207 is amended to read as follows:  
24 8-5-207. Operators to be licensed.

25 In order to safeguard the public health and protect the waters of this  
26 state from pollution, all operators in responsible charge of public or  
27 private wastewater treatment plants shall be duly licensed and certified as  
28 competent by the ~~Arkansas Department~~ Division of Environmental Quality under  
29 the provisions of this subchapter and under such rules and regulations as the  
30 Arkansas Pollution Control and Ecology Commission may adopt, with the advice  
31 and assistance of the licensing committee, pursuant to the authority of this  
32 subchapter. All rules and regulations promulgated pursuant to this subchapter  
33 shall be reviewed by the House Committee on Public Health, Welfare, and Labor  
34 and the Senate Committee on Public Health, Welfare, and Labor or appropriate  
35 subcommittees of the House Committee on Public Health, Welfare, and Labor and  
36 the Senate Committee on Public Health, Welfare, and Labor.

1  
2 SECTION 152. Arkansas Code § 8-5-208 is amended to read as follows:

3 8-5-208. License requirements.

4 (a) The ~~Arkansas Department~~ Division of Environmental Quality shall  
5 license and certify all applicants for licenses under this subchapter who  
6 satisfy the requirements of this subchapter and the rules and regulations  
7 issued pursuant to this subchapter. Licenses shall be granted according to  
8 the classification of wastewater treatment plants established under this  
9 subchapter. Licenses shall be valid for a period of two (2) years and shall  
10 be renewable upon application without examination.

11 (b) All operators of wastewater treatment plants within the state  
12 shall apply to the ~~department~~ division for a license.

13 (c) In its discretion, the ~~department~~ division may waive the  
14 requirements or any part of the requirements for formal examination of an  
15 applicant for license if the applicant holds a valid license or certificate  
16 from another state in which the requirements for license in the appropriate  
17 classification are at least equal to the requirements set forth in this  
18 subchapter and the rules and regulations issued pursuant to this subchapter.  
19

20 SECTION 153. Arkansas Code § 8-5-701(1), concerning the definition of  
21 "chronic noncompliance" under the laws addressing chronic noncompliance, is  
22 amended to read as follows:

23 (1) "Chronic noncompliance" means conditions described in this  
24 subchapter that persist at a common sewage system after reasonable efforts by  
25 the ~~Arkansas Department~~ Division of Environmental Quality to obtain  
26 compliance with applicable laws or regulations in one (1) of the following:

27 (A) Failure to obtain a permit as required by law;  
28 (B) Four (4) or more permit violations within a six-month  
29 period as set out in the permit issued by the ~~department~~ division;

30 (C) Failure to maintain the services of a certified  
31 wastewater treatment operator, where applicable; or

32 (D) Demonstrable failure to operate the common sewage  
33 system so as to prevent the discharge of waterborne pollutants in  
34 unacceptable concentrations, as defined in the individual permit or the  
35 state's water quality standards, to the surface waters or groundwater of the  
36 state; and

1  
2 SECTION 154. Arkansas Code § 8-5-702(a), concerning remedies for  
3 chronic violations by common sewage systems, is amended to read as follows:

4 (a) The ~~Arkansas Department~~ Division of Environmental Quality may  
5 petition a circuit court with competent jurisdiction and proper venue to  
6 remedy chronic violations by any common sewage system.

7  
8 SECTION 155. Arkansas Code § 8-5-702(c)(1), concerning remedies for  
9 chronic violations by common sewage systems, is amended to read as follows:

10 (c)(1) If the circuit court finds that circumstances prevent the owner  
11 or operator of a common sewage system from operating and maintaining the  
12 system in compliance with the law, the ~~Arkansas Department~~ Division of  
13 Environmental Quality shall nominate two (2) possible receivers, of which the  
14 court may appoint one (1) to operate the common sewage system, subject to the  
15 continuing jurisdiction of the circuit court.

16  
17 SECTION 156. Arkansas Code § 8-5-702(d), concerning remedies for  
18 chronic violations by common sewage systems, is amended to read as follows:

19 (d)(1) If the circuit court determines that the permitted or  
20 registered entity cannot equitably satisfy the provisions of this subchapter  
21 or that no feasible alternatives exist, the circuit court shall so certify  
22 that determination to the ~~Arkansas Department~~ Division of Environmental  
23 Quality, which shall terminate the entity's permit, and the circuit court  
24 shall request a review by the ~~Director~~ Secretary of the Department of Health  
25 of the public health impact of an order compelling the entity supplying  
26 potable water to the common sewage system to cut off the flow of potable  
27 water.

28 (2)(A) If the ~~Director of the Department of Health~~ secretary  
29 determines that a greater health hazard exists from the malfunctioning common  
30 sewage system than from the discontinuance of potable water service, then the  
31 ~~Director of the Department of Health~~ secretary shall so certify this  
32 determination to the circuit court.

33 (B) The circuit court shall then issue an order compelling  
34 the receiver to notify all users of such common sewage system, including  
35 landowners and tenants, of the ~~Director of the Department of Health's~~  
36 secretary's determination.

1 (C) Upon evidence of reasonable notice, the circuit court  
2 shall then issue the order to cut off the flow of potable water.

3  
4 SECTION 157. The introductory language of Arkansas Code § 8-5-702(e),  
5 concerning remedies for chronic violations by common sewage systems, is  
6 amended to read as follows:

7 (e) The ~~Arkansas Department~~ Division of Environmental Quality is  
8 authorized to institute a civil action in any court of competent jurisdiction  
9 to accomplish any or all of the following:

10  
11 SECTION 158. Arkansas Code § 8-5-702(e)(3), concerning remedies for  
12 chronic violations by common sewage systems, is amended to read as follows:

13 (3) Recover all costs, expenses, and damages to the ~~Arkansas~~  
14 ~~Department~~ Division of Environmental Quality and any other agency or  
15 subdivision of the state in enforcing or effectuating the provisions of this  
16 subchapter, including, but not limited to, natural resource damages;

17  
18 SECTION 159. Arkansas Code § 8-5-702(f), concerning remedies for  
19 chronic violations by common sewage systems, is amended to read as follows:

20 (f)(1) In addition to the remedies provided in subsections (a)-(e) of  
21 this section, the ~~Arkansas Department~~ Division of Environmental Quality shall  
22 have the authority to prohibit new or additional sewer line connections onto  
23 a common sewage system meeting the criteria established by § 8-5-701.

24 (2) Once the ~~Arkansas Department~~ Division of Environmental  
25 Quality is satisfied that the common sewage system is in compliance with  
26 state and federal law, the ~~Arkansas Department~~ Division of Environmental  
27 Quality may authorize new or additional sewer line connections onto the  
28 common sewage system.

29  
30 SECTION 160. Arkansas Code § 8-5-703 is amended to read as follows:

31 8-5-703. Financial assurance requirements for subsequently permitted  
32 common sewage systems.

33 (a)(1)(A) The ~~Arkansas Department~~ Division of Environmental Quality  
34 may require a permitted common sewage system that is in chronic noncompliance  
35 to demonstrate to the ~~department~~ division its financial ability to cover the  
36 estimated costs of operating and maintaining the common sewage system for a



1 minimum period of five (5) years.

2 (B) The ~~department~~ division may require the permitted  
3 common sewage system that is in chronic noncompliance to submit a cost  
4 estimate for a third party to operate and maintain the common sewage system  
5 each year for a period of five (5) years.

6 (2) The ~~department~~ division shall not modify or renew a National  
7 Pollutant Discharge Elimination System permit or state permit for a common  
8 sewage system if the common sewage system facility is in chronic  
9 noncompliance and the common sewage system facility proposes to use new  
10 technology that in the discretion of the ~~department~~ division cannot be  
11 verified to meet permit requirements.

12 (b) The applicant's financial ability to operate and maintain the  
13 common sewage system for a period of five (5) years shall be demonstrated to  
14 the ~~department~~ division by:

15 (1) Obtaining insurance that specifically covers operation and  
16 maintenance costs;

17 (2) Obtaining a letter of credit;

18 (3) Obtaining a surety bond;

19 (4) Obtaining a trust fund or an escrow account; or

20 (5) Using a combination of insurance, letter of credit, surety  
21 bond, trust fund, or escrow account.

22 (c) The ~~department~~ division may require an amount of financial  
23 assurance that exceeds the cost estimate submitted by the applicant.

24 (d) A financial instrument required by this section shall be posted to  
25 the benefit of the ~~department~~ division and shall remain in effect for the  
26 life of the permit.

27 (e) It is explicitly understood that the ~~department~~ division shall not  
28 directly operate and shall not be responsible for the operation of any sewage  
29 system.

30 (f) This section does not restrict local and county government  
31 entities from enacting more stringent ordinances regulating nonmunicipal  
32 domestic treatment sewage systems in Arkansas.

33  
34 SECTION 161. Arkansas Code § 8-5-802 is amended to read as follows:

35 8-5-802. Purpose.

36 It is the purpose of this subchapter to authorize the ~~Arkansas~~

1 ~~Department~~ Division of Environmental Quality to establish and administer a  
 2 revolving loan fund to encourage the investment in pollution control and  
 3 prevention technologies in Arkansas. The fund will promote sustainable  
 4 economic development in Arkansas by establishing a publicly capitalized fund  
 5 to make loans to small businesses for projects to meet regulatory mandates in  
 6 pollution control, to adopt pollution prevention technologies, or to  
 7 implement waste reduction practices.

8  
 9 SECTION 162. Arkansas Code § 8-5-803(3) and (4), concerning the  
 10 definitions of "department" and "director" under the laws establishing the  
 11 Small Business Revolving Loan Fund for Pollution Control and Prevention  
 12 Technologies Act, are repealed

13 ~~(3) "Department" means the Arkansas Department of Environmental~~  
 14 ~~Quality;~~

15 ~~(4) "Director" means the executive head and active administrator~~  
 16 ~~of the Arkansas Department of Environmental Quality;~~

17  
 18 SECTION 163. Arkansas Code § 8-5-804 is amended to read as follows:  
 19 8-5-804. Eligible activities.

20 (a) Moneys deposited into the Small Business Revolving Loan Fund  
 21 within the ~~Arkansas Department~~ Division of Environmental Quality may be:

22 (1) Loaned to eligible participants to pay the direct costs of  
 23 projects which are designed to correct or avoid violations of federal or  
 24 state environmental regulations and have received a certificate of need from  
 25 the ~~department~~ division; or

26 (2) Expended to pay costs incurred by the ~~department~~ division to  
 27 provide management of lending activities.

28 (b)(1) It is the purpose of this subchapter to authorize the  
 29 ~~department~~ division to establish and administer a revolving loan fund to  
 30 encourage the investment in pollution control, pollution prevention, and  
 31 waste reduction practices in Arkansas.

32 (2) Such a fund will promote sustainable economic development in  
 33 Arkansas by establishing a publicly capitalized revolving loan fund to make  
 34 loans to small businesses for projects to meet regulatory mandates in  
 35 pollution control or to adopt pollution prevention technologies.

36 (3) Operating expenses associated with proofing a process change

1 or equipment modification would be an eligible loan activity.

2  
3 SECTION 164. Arkansas Code § 8-5-805(a)(1), concerning eligible  
4 applications, is amended to read as follows:

5 (1) Employ one hundred (100) or fewer individuals, including  
6 both full-time and part-time employees, through direct hiring or contract,  
7 including affiliates and subsidiaries, at the time an application for a loan  
8 is received by the ~~Arkansas Department~~ Division of Environmental Quality;

9  
10 SECTION 165. Arkansas Code § 8-5-805(a)(3), concerning eligible  
11 applications, is amended to read as follows:

12 (3) Submit an application supplied by the ~~department~~ division  
13 including any supporting documents, instruments, or other documents requested  
14 by the ~~department~~ division for the purposes of recommending approval or  
15 disapproval of a loan described in this section.

16  
17 SECTION 166. Arkansas Code § 8-5-805(b)(1), concerning eligible  
18 applications, is amended to read as follows:

19 (b)(1) Until all delinquent fees stated in this subsection or  
20 otherwise owed to the ~~department~~ division are paid in full and no balance is  
21 due, the Director of the ~~Arkansas Department~~ Division of Environmental  
22 Quality shall not approve any loan application.

23  
24 SECTION 167. Arkansas Code § 8-5-806(c)(1), concerning terms of the  
25 revolving loan, is amended to read as follows:

26 (1) Established by the ~~Arkansas Department~~ Division of  
27 Environmental Quality at or below market rate; and

28  
29 SECTION 168. The introductory language of Arkansas Code § 8-5-  
30 806(e)(1), concerning terms of the revolving loan, is amended to read as  
31 follows:

32 (e)(1) The ~~department~~ division may:

33  
34 SECTION 169. Arkansas Code § 8-5-806(f), concerning terms of the  
35 revolving loan, is amended to read as follows:

36 (f) The ~~department~~ division may bring any lawful action to recover any

1 loan that is in default.

2  
3 SECTION 170. The introductory language of Arkansas Code § 8-5-807(a),  
4 concerning the Small Business Revolving Loan Fund, is amended to read as  
5 follows:

6 (a) There is created within the ~~Arkansas Department~~ Division of  
7 Environmental Quality a revolving loan fund:

8  
9 SECTION 171. Arkansas Code § 8-5-807(a)(3), concerning the Small  
10 Business Revolving Loan Fund, is amended to read as follows:

11 (3) To be used as a revolving fund by the ~~department~~ division  
12 for making loans to eligible participants to pay the direct costs of projects  
13 that are designed to correct or avoid violations of federal or state  
14 environmental regulations and have received a certificate of need from the  
15 ~~department~~ division or to pay costs incurred by the ~~department~~ division to  
16 provide management of lending activities.

17  
18 SECTION 172. The introductory language of Arkansas Code § 8-5-  
19 807(b)(2)(B), concerning the Small Business Revolving Loan Fund, is amended  
20 to read as follows:

21 (B) All moneys received by the ~~department~~ division upon  
22 repayment of loans made from the furnishing of funds for loans under the  
23 program created by this subchapter;

24  
25 SECTION 173. The introductory language of Arkansas Code § 8-5-807(c),  
26 concerning the Small Business Revolving Loan Fund, is amended to read as  
27 follows:

28 (c)(1) Subject to the provisions of this subchapter, the ~~department~~  
29 division is vested with full power, authority, and jurisdiction over the  
30 Small Business Revolving Loan Fund, including all moneys and property or  
31 securities belonging to the Small Business Revolving Loan Fund.

32 (2) The ~~department~~ division may invest the Small Business  
33 Revolving Loan Fund in direct general obligations of the United States, in  
34 certificates of deposit or savings accounts in an amount not to exceed the  
35 capital funds, represented by capital, surplus, and undivided profits in  
36 financial institutions located in Arkansas that are insured by an agency of

1 the United States Government, and in repurchase agreements that are  
2 collateralized by direct general obligations of the United States or by  
3 bonds, notes, debentures, participation certificates, or other obligations  
4 issued by an agency of the United States, the principal and interest of which  
5 are guaranteed by the agency or the United States.

6  
7 SECTION 174. Arkansas Code § 8-5-808 is amended to read as follows:  
8 8-5-808. Administration of the program.

9 The ~~Arkansas Department~~ Division of Environmental Quality will manage  
10 the program through its Small Business Assistance Program. The program is  
11 authorized to delegate the management of the Small Business Revolving Loan  
12 Fund. The ~~department~~ division shall retain the power to issue certificates of  
13 need for eligible projects and shall not delegate such authority.

14  
15 SECTION 175. Arkansas Code § 8-5-902(2), concerning the definition of  
16 "department" under the laws regarding long-term environmental projects, is  
17 repealed.

18 ~~(2) "Department" means the Arkansas Department of Environmental~~  
19 ~~Quality;~~

20  
21 SECTION 176. The introductory language of Arkansas Code § 8-5-903(a),  
22 concerning the procedures for approval of environmental projects, contents of  
23 applications, and public notice, is amended to read as follows:

24 (a) A petitioner seeking approval of a change in water quality  
25 standards to accommodate a long-term improvement project shall file with the  
26 ~~Arkansas Department~~ Division of Environmental Quality a notice of intent,  
27 which includes as a minimum:

28  
29 SECTION 177. Arkansas Code § 8-5-903(b) and (c), concerning the  
30 procedures for approval of environmental projects, contents of applications,  
31 and public notice, are amended to read as follows:

32 (b) The ~~department~~ division shall cause notice of the proposed project  
33 and associated water quality standard changes described in subsection (a) of  
34 this section to be published for public notice and comment in the same manner  
35 as provided for permit applications in § 8-4-203(c), and shall notify the  
36 public that the details of the proposed project are available for public

1 review.

2 (c)(1) After considering comments from the public, the ~~department~~  
3 division shall notify the petitioner as to whether the proposed project is  
4 approved or denied.

5 (2) The ~~department~~ division may deny approval of a project if it  
6 reasonably concludes that:

7 (A) The plan is not complete;

8 (B) The plan is not technically sound;

9 (C) The schedule is unrealistic;

10 (D) The plan will not have an overall beneficial effect  
11 for the environment; or

12 (E) For other appropriate reasons.

13 (3) Any ~~department~~ division determination on the approval or  
14 denial of a project is subject to the appeal procedures applicable to  
15 permitting decisions set out in § 8-4-205.

16

17 SECTION 178. Arkansas Code § 8-5-904(b) and (c), concerning the  
18 modification of water quality standards, are amended to read as follows:

19 (b)(1) Once the commission approves a water quality standard  
20 modification, the ~~Arkansas Department~~ Division of Environmental Quality shall  
21 ensure that conditions and limitations designed to achieve compliance with  
22 the plan are established in applicable discharge permits, consent  
23 administrative orders, or such other enforcement measures deemed appropriate  
24 by the ~~department~~ division.

25 (2) The ~~department~~ division may allow modifications by the  
26 petitioner to the remediation plan and schedule as is deemed appropriate,  
27 provided that any such modifications to the original remedial action plan  
28 shall not render the project significantly less protective of the applicable  
29 use subcategory.

30 (3) Should the ~~department~~ division find that the petitioner is  
31 not acting in good faith to complete the project in accordance with the  
32 approved plan, applicable and appropriate enforcement authority may be  
33 exercised subject to appeal to the commission.

34 (c) The ~~department~~ division or the petitioner shall report annually to  
35 the commission on the progress of the project.

36

1 SECTION 179. The introductory language of Arkansas Code § 8-6-  
2 203(2)(A), concerning the definition of "hazardous waste" under the Arkansas  
3 Solid Waste Management Act, is amended to read as follows:

4 (2)(A) "Hazardous waste" means any waste or combination of  
5 wastes of a solid, liquid, contained gaseous, or semisolid form that, because  
6 of its quantity, concentration, or physical, chemical, or infectious  
7 characteristics, may in the judgment of the ~~Arkansas Department~~ Division of  
8 Environmental Quality:

9  
10 SECTION 180. Arkansas Code § 8-6-203(5)(B)(i), concerning the  
11 definition of "household hazardous waste storage or processing center" under  
12 the Arkansas Solid Waste Management Act, is amended to read as follows:

13 (i) Hazardous waste treatment, storage, and disposal  
14 facilities permitted by the ~~department~~ division under the Resource  
15 Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.;

16  
17 SECTION 181. Arkansas Code § 8-6-204(a)(1)(A), concerning criminal,  
18 civil, and administrative penalties under the Arkansas Solid Waste Management  
19 Act, is amended to read as follows:

20 (1)(A) Any person who violates any provision of this subchapter,  
21 who commits any unlawful act under this subchapter, or who violates any rule,  
22 regulation, or order of the Arkansas Pollution Control and Ecology Commission  
23 or the ~~Arkansas Department~~ Division of Environmental Quality shall be guilty  
24 of a misdemeanor.

25  
26 SECTION 182. Arkansas Code § 8-6-204(a)(2)(A)(i), concerning criminal,  
27 civil, and administrative penalties under the Arkansas Solid Waste Management  
28 Act, is amended to read as follows:

29 (i) Violate any provision of this subchapter, commit  
30 any unlawful act under this subchapter, or violate any rule, regulation, or  
31 order of the commission or ~~department~~ division, and leave the state or remove  
32 his or her person from the jurisdiction of this state;

33  
34 SECTION 183. The introductory language of Arkansas Code § 8-6-204(b),  
35 concerning criminal, civil, and administrative penalties under the Arkansas  
36 Solid Waste Management Act, is amended to read as follows:

1 (b) Civil Penalties. The ~~department~~ division is authorized to  
2 institute a civil action in any court of competent jurisdiction to accomplish  
3 any or all of the following:  
4

5 SECTION 184. Arkansas Code § 8-6-204(b)(3), concerning criminal,  
6 civil, and administrative penalties under the Arkansas Solid Waste Management  
7 Act, is amended to read as follows:

8 (3) Recover all costs, expenses, and damages to the ~~department~~  
9 division and any other agency or subdivision of the state in enforcing or  
10 effectuating the provisions of this subchapter, including natural resource  
11 damages;  
12

13 SECTION 185. Arkansas Code § 8-6-204(c), concerning criminal, civil,  
14 and administrative penalties under the Arkansas Solid Waste Management Act,  
15 is amended to read as follows:

16 (c) Any person who violates any provision of this subchapter and  
17 regulations, rules, permits, or plans issued pursuant to this subchapter may  
18 be assessed an administrative civil penalty not to exceed ten thousand  
19 dollars (\$10,000) per violation. Each day of a continuing violation may be  
20 deemed a separate violation for purposes of civil penalty assessment. No  
21 civil penalty may be assessed until the person charged with the violation has  
22 been given the opportunity for a hearing in accordance with regulations  
23 adopted by the commission. All hearings and appeals arising under this  
24 subchapter shall be conducted in accordance with the procedures prescribed by  
25 §§ 8-4-205, 8-4-212, and 8-4-218 – 8-4-229. These administrative procedures  
26 may also be used to recover all costs, expenses, and damages to the  
27 ~~department~~ division and any other agency or subdivision of the state in  
28 enforcing or effectuating the provisions of this subchapter, including  
29 natural resource damages.  
30

31 SECTION 186. Arkansas Code § 8-6-204(e)(1), concerning criminal,  
32 civil, and administrative penalties under the Arkansas Solid Waste Management  
33 Act, is amended to read as follows:

34 (e)(1) All moneys collected as reimbursement for expenses, costs, and  
35 damages to the ~~department~~ division shall be deposited into the operating fund  
36 of the ~~department~~ division.



1  
2 SECTION 187. Arkansas Code § 8-6-204(e)(3), concerning criminal,  
3 civil, and administrative penalties under the Arkansas Solid Waste Management  
4 Act, is amended to read as follows:

5 (3)(A) The Director of the ~~Arkansas Department~~ Division of  
6 Environmental Quality, in his or her discretion, may authorize in-kind  
7 services or cash contributions as partial mitigation of cash penalties for  
8 use in projects or programs designed to advance environmental interests.

9 (B) The violator may provide in-kind services or cash  
10 contributions as directed by the ~~department~~ division by utilizing the  
11 violator's own expertise, by hiring and compensating subcontractors to  
12 perform the in-kind services, by arranging and providing financing for the  
13 in-kind services, or by other financial arrangements initiated by the  
14 ~~department~~ division in which the violator and the ~~department~~ division retain  
15 no monetary benefit, however remote.

16 (C) The in-kind services shall not duplicate or augment  
17 services already provided by the ~~department~~ division through appropriations  
18 of the General Assembly.

19  
20 SECTION 188. Arkansas Code § 8-6-205(a)(1)-(3), concerning illegal  
21 actions, rebuttal presumption, and acts or omissions by a third party under  
22 the Arkansas Solid Waste Management Act, are amended to read as follows:

23 (1) To violate any provision of this subchapter or any rule,  
24 regulation, or order of the Arkansas Pollution Control and Ecology Commission  
25 issued pursuant to this subchapter or of a permit issued under this  
26 subchapter by the ~~Arkansas Department~~ Division of Environmental Quality;

27 (2) To construct, install, alter, modify, use, or operate any  
28 solid waste processing or disposal facility or disposal site without a permit  
29 from the ~~department~~ division;

30 (3) To dispose of solid wastes at any disposal site or facility  
31 other than a disposal site or facility for which a permit has been issued by  
32 the ~~department~~ division. However, no provision of this subchapter shall be  
33 construed so as to prevent an individual from disposing of solid wastes  
34 resulting from his or her own household activities on his or her own land if  
35 the disposal does not create a public or private nuisance or a hazard to  
36 health and does not violate a city ordinance or other law and does not

1 involve the open dumping of garbage;

2  
3 SECTION 189. Arkansas Code § 8-6-205(a)(5), concerning illegal  
4 actions, rebuttal presumption, and acts or omissions by a third party under  
5 the Arkansas Solid Waste Management Act, is amended to read as follows:

6 (5) To sort, collect, transport, process, or dispose of solid  
7 waste contrary to the rules, regulations, or orders of the ~~department~~  
8 division or in such a manner or place as to create or be likely to create a  
9 public nuisance or a public health hazard or to cause or be likely to cause  
10 water or air pollution within the meaning of the Arkansas Water and Air  
11 Pollution Control Act, § 8-4-101 et seq.

12  
13 SECTION 190. The introductory language of Arkansas Code § 8-6-207(a),  
14 concerning the powers and duties of the Arkansas Department of Environmental  
15 Quality, is amended to read as follows:

16 (a) The ~~Arkansas Department~~ Division of Environmental Quality or its  
17 successor shall have the following powers and duties:

18  
19 SECTION 191. Arkansas Code § 8-6-207(a)(6) and (7), concerning the  
20 powers and duties of the Arkansas Department of Environmental Quality, are  
21 amended to read as follows:

22 (6) To issue, continue in effect, revoke, modify, or deny, under  
23 such conditions as the ~~department~~ division may prescribe, permits for the  
24 establishment, construction, operation, or maintenance of solid waste  
25 management systems, disposal sites, and facilities;

26 (7) To make investigations, inspections, and to hold such  
27 hearings, after notice, as the ~~department~~ division may deem necessary or  
28 advisable for the discharge of duties under this subchapter and to ensure  
29 compliance with this subchapter and any orders, rules, and regulations issued  
30 pursuant thereto;

31  
32 SECTION 192. Arkansas Code § 8-6-207(a)(9), concerning the powers and  
33 duties of the Arkansas Department of Environmental Quality, is amended to  
34 read as follows:

35 (9) To institute proceedings in the name of the ~~department~~  
36 division in any court of competent jurisdiction to compel compliance with and

1 to restrain violation of the provisions of this subchapter or any rules,  
2 regulations, and orders issued pursuant thereto and to require the taking of  
3 such remedial measures for solid waste disposal as may be necessary or  
4 appropriate to implement or effectuate the provisions and purposes of this  
5 subchapter;

6  
7 SECTION 193. Arkansas Code § 8-6-207(a)(12), concerning the powers and  
8 duties of the Arkansas Department of Environmental Quality, is amended to  
9 read as follows:

10 (12) To issue, continue in effect, revoke, modify, or deny,  
11 under such conditions as the ~~department~~ division may prescribe, permits for  
12 the establishment, construction, operation, or maintenance of transfer  
13 stations;

14  
15 SECTION 194. Arkansas Code § 8-6-207(a)(15), concerning the powers and  
16 duties of the Arkansas Department of Environmental Quality, is amended to  
17 read as follows:

18 (15) Upon the petition of a solid waste board or upon the  
19 ~~department's~~ division's own initiative to revoke, modify, or deny a permit  
20 for a solid waste disposal facility or a permit for any other element of a  
21 solid waste management system based upon noncompliance with an approved  
22 regional solid waste management plan of a solid waste board.

23  
24 SECTION 195. Arkansas Code § 8-6-207(b)(1)(A), concerning the powers  
25 and duties of the Arkansas Department of Environmental Quality, is amended to  
26 read as follows:

27 (1)(A) Promulgation of rules and regulations implementing the  
28 substantive statutes charged to the ~~department~~ division for administration.

29  
30 SECTION 196. Arkansas Code § 8-6-207(b)(3) and (4), concerning the  
31 powers and duties of the Arkansas Department of Environmental Quality, are  
32 amended to read as follows:

33 (3) Promulgation of rules and regulations governing  
34 administrative procedures for challenging or contesting ~~department~~ division  
35 actions;

36 (4) In the case of permitting or grants decisions, providing the

1 right to appeal a permitting or grants decision rendered by the Director of  
2 the ~~Arkansas Department~~ Division of Environmental Quality or his or her  
3 delegatee;

4  
5 SECTION 197. Arkansas Code § 8-6-207(b)(7), concerning the powers and  
6 duties of the Arkansas Department of Environmental Quality, is amended to  
7 read as follows:

8 (7) Make recommendations to the director regarding overall  
9 policy and administration of the ~~department~~ division, provided, however, that  
10 the director shall always remain within the plenary authority of the  
11 Governor;

12  
13 SECTION 198. Arkansas Code § 8-6-214 is amended to read as follows:

14 8-6-214. Records and examinations.

15 (a) The owner or operator of any permitted facility or site shall  
16 establish and maintain such records, make such reports, install, use, and  
17 maintain such monitoring equipment or methods, take such samples, perform  
18 such tests, and provide such other information to the ~~Arkansas Department~~  
19 Division of Environmental Quality as the Director of the ~~Arkansas Department~~  
20 Division of Environmental Quality may reasonably require.

21 (b) The ~~department~~ division or any authorized employee or agent may  
22 examine and copy any books, papers, records, or memoranda pertaining to the  
23 operation of the facility or site.

24 (c) The ~~department~~ division or any authorized employee or agent may  
25 enter upon any public or private property for the purpose of obtaining  
26 information or conducting surveys or investigations necessary or appropriate  
27 for the purpose of this subchapter.

28 (d)(1)(A) Any records, reports, or information obtained under this  
29 subchapter and any permits, permit applications, and related documentation  
30 shall be available to the public for inspection and copying.

31 (B) Upon a satisfactory showing to the director that the  
32 records, reports, permits, documentation, or information, or any part  
33 thereof, if made public, would divulge methods or processes entitled to  
34 protection as trade secrets, then the director shall consider, treat, and  
35 protect such records, reports, or information as confidential.

36 (2)(A) As necessary to carry out the provisions of this

1 subchapter, information afforded confidential treatment may be transmitted  
2 under a continuing restriction of confidentiality to other officers,  
3 employees, or authorized representatives of this state or of the United  
4 States if the owner or operator of the facility to which the information  
5 pertains is informed at least two (2) weeks prior to the transmittal and if  
6 the information has been acquired by the ~~department~~ division under the  
7 provisions of this subchapter.

8 (B) The provisions of this subdivision (d)(2) shall not be  
9 construed to limit the ~~department's~~ division's authority to release  
10 confidential information during emergency situations.

11 (3) Any violation of this subsection shall be unlawful and  
12 constitute a misdemeanor.

13  
14 SECTION 199. Arkansas Code § 8-6-220(a)(2)(A), concerning yard waste,  
15 is amended to read as follows:

16 (2)(A) If authorized by the ~~Arkansas Department~~ Division of  
17 Environmental Quality through a permit modification process including a  
18 public notice and comment period, yard waste may be accepted by a permitted  
19 solid waste landfill that operates a landfill gas-to-energy system for the  
20 recovery and use of landfill gas as a renewable energy fuel source.

21  
22 SECTION 200. The introductory language of Arkansas Code § 8-6-  
23 220(a)(2)(B), concerning yard waste, is amended to read as follows:

24 (B) The ~~department~~ division shall consider, at a minimum,  
25 the following before authorizing yard waste to be accepted by a solid waste  
26 landfill for disposal:

27  
28 SECTION 201. Arkansas Code § 8-6-220(a)(2)(B)(xiii), concerning yard  
29 waste, is amended to read as follows:

30 (xiii) Other information as may be required by the  
31 ~~department~~ division.

32  
33 SECTION 202. Arkansas Code § 8-6-220(b)(2), concerning yard waste, is  
34 amended to read as follows:

35 (2) Such choices of yard waste reduction or usage shall be  
36 submitted to the ~~department~~ division for approval and shall become an

1 integral part of the district's solid waste management plan.

2  
 3 SECTION 203. Arkansas Code § 8-6-223(a), concerning a required permit  
 4 for household hazardous waste storage or processing centers, is amended to  
 5 read as follows:

6 (a) It is unlawful for a person to own or operate a household  
 7 hazardous waste storage or processing center, as defined in § 8-6-203,  
 8 without first obtaining from the ~~Arkansas Department~~ Division of  
 9 Environmental Quality a transfer station permit or another permit that the  
 10 ~~department~~ division deems appropriate and that meets the requirements of this  
 11 section.

12  
 13 SECTION 204. Arkansas Code § 8-6-223(b)(1), concerning a required  
 14 permit for household hazardous waste storage or processing centers, is  
 15 amended to read as follows:

16 (b)(1) The ~~department~~ division shall not issue, modify, or renew a  
 17 permit for a household hazardous waste storage or processing center regulated  
 18 under this section without the permit applicant's first demonstrating to the  
 19 ~~department's~~ division's satisfaction the applicant's financial ability to  
 20 ensure proper removal and disposal of household hazardous waste located at  
 21 the household hazardous waste storage or processing center under this  
 22 section.

23  
 24 SECTION 205. Arkansas Code § 8-6-223(c)(6), concerning a required  
 25 permit for household hazardous waste storage or processing centers, is  
 26 amended to read as follows:

27 (6) Any other financial instrument approved by the Director of  
 28 the ~~Arkansas Department~~ Division of Environmental Quality.

29  
 30 SECTION 206. Arkansas Code § 8-6-223(d)-(j), concerning a required  
 31 permit for household hazardous waste storage or processing centers, are  
 32 amended to read as follows:

33 (d) A financial instrument required by this section shall:

- 34 (1) Be posted to the benefit of the ~~department~~ division;
- 35 (2) Provide that the financial instrument cannot be cancelled
- 36 without sixty (60) days' prior written notice addressed to the ~~department's~~

1 division's legal division chief as evidenced by a signed, certified mail with  
2 a return receipt request; and

3 (3) Be reviewed by the ~~department~~ division upon receipt of the  
4 cancellation notice to determine whether the ~~department~~ division should  
5 initiate procedures to revoke or suspend the household hazardous waste  
6 storage or processing center's permit and whether the ~~department~~ division  
7 should take possession of the funds guaranteed by the financial assurance  
8 mechanism.

9 (e) Before the ~~department~~ division may release a financial assurance  
10 mechanism, the ~~department~~ division shall inspect the household hazardous  
11 waste storage or processing center to determine to the ~~department's~~  
12 division's satisfaction that no household hazardous waste is located at the  
13 household hazardous waste storage or processing center.

14 (f) The ~~department~~ division is not responsible for the removal or  
15 disposal of household hazardous waste regulated under this section.

16 (g) Before an application for a permit is submitted to the ~~department~~  
17 division, a household hazardous waste storage or processing center shall  
18 apply for a certificate of need from the regional solid waste management  
19 board that has jurisdiction over the proposed site and shall follow the  
20 procedures and rules established under § 8-6-708.

21 (h) A household hazardous waste storage or processing center shall  
22 submit a permit application to the ~~department~~ division within ninety (90)  
23 days of the approval of the certificate of need.

24 (i) If a certificate of need is not approved under subsection (g) of  
25 this section or a final determination is made by the ~~department~~ division  
26 denying the permit application, the household hazardous waste storage or  
27 processing center shall cease all collection, storage, or processing activity  
28 and properly dispose of or recycle all materials within ninety (90) days.

29 ~~(j) By October 1, 2011, each household hazardous waste storage or~~  
30 ~~processing center operating before July 27, 2011, shall:~~

31 ~~(1) Submit to the department a plan to remove and dispose of~~  
32 ~~all household hazardous waste located at the household hazardous waste~~  
33 ~~storage or processing center in accordance with this section;~~

34 ~~(2) Submit to the department a detailed cost estimate to remove~~  
35 ~~and dispose of the household hazardous waste located at the household~~  
36 ~~hazardous waste storage or processing center that meets the requirements of~~

1 ~~this section and is approved by the department ; and~~

2 ~~(3) Obtain financial assurance in accordance with subdivision~~  
 3 ~~(b)(2) of this section.~~

4  
 5 SECTION 207. Arkansas Code § 8-6-405 is amended to read as follows:  
 6 8-6-405. Injunction.

7 In addition to all other remedies provided by this subchapter, the  
 8 ~~Arkansas Department~~ Division of Environmental Quality, the Attorney General,  
 9 the prosecuting attorney of a county where any violation of any provision of  
 10 this subchapter occurs, or any citizen, resident, or taxpayer of the county  
 11 where a violation of any provision of this subchapter occurs may apply to the  
 12 circuit court or the judge in vacation of the county where the alleged  
 13 violation occurred for an injunction to restrain, prevent, or abate the  
 14 maintenance and storage of litter, junk motor vehicles, old vehicle tires, or  
 15 inoperative or discarded household appliances in violation of any provision  
 16 of this subchapter.

17  
 18 SECTION 208. Arkansas Code § 8-6-406(a)(1), concerning littering and  
 19 commercial littering, is amended to read as follows:

20 (1) The property has been designated by the ~~Arkansas Department~~  
 21 Division of Environmental Quality as a permitted disposal site;

22  
 23 SECTION 209. Arkansas Code § 8-6-503(2) and (3), concerning the  
 24 definitions of "department" and "director" under the Illegal Dump Eradication  
 25 and Corrective Action Program Act, are repealed.

26 ~~(2) "Department" means the Arkansas Department of Environmental~~  
 27 ~~Quality;~~

28 ~~(3) "Director" means the Director of the Arkansas Department of~~  
 29 ~~Environmental Quality;~~

30  
 31 SECTION 210. Arkansas Code § 8-6-503(5), concerning the definition of  
 32 "illegal dumping of solid waste" under the Illegal Dump Eradication and  
 33 Corrective Action Program Act, is amended to read as follows:

34 (D) Upon any property for which a permit has not been  
 35 issued by the ~~department~~ Division of Environmental Quality;



SECTION 211. Arkansas Code § 8-6-504 is amended to read as follows:

8-6-504. Illegal Dump Eradication and Corrective Action Program.

The Illegal Dump Eradication and Corrective Action Program shall be administered by the ~~Arkansas Department~~ Division of Environmental Quality.

SECTION 212. Arkansas Code § 8-6-510 is amended to read as follows:

8-6-510. Effectiveness of regulations and orders.

None of the provisions of this act are intended to supersede any of the reuse, recycling, or fill provisions of state law of Regulation 22 of the Solid Waste Management Division of the ~~Arkansas Department~~ Division of Environmental Quality.

SECTION 213. Arkansas Code § 8-6-602(c)(2)(D), concerning the duties of the Arkansas Department of Environmental Quality under the Solid Waste Management and Recycling Fund Act, is amended to read as follows:

(D) Other activities as approved by the ~~Arkansas Department~~ Division of Environmental Quality.

SECTION 214. Arkansas Code § 8-6-602(d), concerning the duties of the Arkansas Department of Environmental Quality under the Solid Waste Management and Recycling Fund Act, is amended to read as follows:

(d) The ~~department~~ division and the Arkansas Pollution Control and Ecology Commission shall promulgate and implement policies, rules, regulations, and procedures for administering the terms of this subchapter.

SECTION 215. Arkansas Code § 8-6-603(2), concerning the definition of "department" under the Solid Waste Management and Recycling Fund Act, is repealed.

~~(2) "Department" means the Arkansas Department of Environmental Quality;~~

SECTION 216. Arkansas Code § 8-6-603(9), concerning the definition of "solid waste management plan" under the Solid Waste Management and Recycling Fund Act, is amended to read as follows:

(9) "Solid waste management plan" means a plan which is developed according to the provisions of the Arkansas Solid Waste Management

1 Act, § 8-6-201 et seq., and guidelines of the ~~department~~ Division  
2 Environmental Quality, and which is subject to approval by the ~~department~~  
3 division;

4  
5 SECTION 217. Arkansas Code § 8-6-603(10)(D), concerning the definition  
6 of "department" under the Solid Waste Management and Recycling Fund Act, is  
7 amended to read as follows:

8 (D) Other activities as approved by the ~~department~~  
9 division; and

10  
11 SECTION 218. Arkansas Code § 8-6-604 is amended to read as follows:  
12 8-6-604. Recycling plans and implementation.

13 (a) Unless otherwise excused by the Arkansas Pollution Control and  
14 Ecology Commission pursuant to the Arkansas Solid Waste Management Act, § 8-  
15 6-201 et seq., each governmental entity which is required to submit or has  
16 submitted a solid waste management plan pursuant to § 8-6-211 shall produce,  
17 by July 1, 1991, a solid waste management plan which proposes the  
18 establishment of recycling programs and facilities. The plan shall be subject  
19 to review and approval by the ~~Arkansas Department~~ Division of Environmental  
20 Quality.

21 (b) Pursuant to established procedures, the ~~department~~ division may  
22 initiate enforcement actions against governmental entities for failure to  
23 abide by the requirements of subsection (a) of this section. Enforcement  
24 sanctions may include, but are not limited to, denial, discontinuation, or  
25 reimbursement of grant funds awarded pursuant to any programs administered by  
26 the ~~department~~ division.

27  
28 SECTION 219. Arkansas Code § 8-6-605(b), concerning the Solid Waste  
29 Management and Recycling Fund, is amended to read as follows:

30 (b) The fund shall be administered by the ~~Arkansas Department~~ Division  
31 of Environmental Quality, which shall authorize distributions and  
32 administrative expenditures from the fund under this subchapter for solid  
33 waste management and recycling programs.

34  
35 SECTION 220. The introductory language of Arkansas Code § 8-6-605(d),  
36 concerning the Solid Waste Management and Recycling Fund, is amended to read

1 as follows:

2 (d) No more than twenty percent (20%) of the moneys received annually  
3 into the fund shall be used by the ~~department~~ division for:

4

5 SECTION 221. Arkansas Code § 8-6-606(d)(1)(B), concerning landfill  
6 disposal fees, is amended to read as follows:

7 (B) This requirement may be satisfied by utilizing an  
8 alternative weighing system approved by the Director of the ~~Arkansas~~  
9 ~~Department~~ Division of Environmental Quality.

10

11 SECTION 222. Arkansas Code § 8-6-606(d)(2), concerning landfill  
12 disposal fees, is amended to read as follows:

13 (2) Class 1 and Class 3C landfills shall be required to weigh  
14 all loads in excess of one (1) ton (2,000 lbs.), unless otherwise authorized  
15 in writing by the ~~Arkansas Department~~ Division of Environmental Quality. This  
16 provision authorizes Class 1 and Class 3C landfills to estimate weights for  
17 residential and other similar loads weighing less than one (1) ton (2,000  
18 lbs.).

19

20 SECTION 223. Arkansas Code § 8-6-606(d)(4)(A) and (B), concerning  
21 landfill disposal fees, are amended to read as follows:

22 (A) All quarterly reports required by this subchapter to  
23 be submitted by Class 1 and Class 3C landfill permittees to the ~~Arkansas~~  
24 ~~Department~~ Division of Environmental Quality shall accurately state the total  
25 weight of solid waste received at the landfill, and the total weight of solid  
26 waste received at the landfill shall be based upon the recorded weight scale  
27 measurements; and

28 (B) The recorded weight scale measurements of solid waste  
29 received at Class 1 and Class 3C landfills shall be used to calculate the  
30 solid waste disposal fees payable to the ~~Arkansas Department~~ Division of  
31 Environmental Quality by Class 1 and Class 3C landfill permittees.

32

33 SECTION 224. Arkansas Code § 8-6-607(1) and (2), concerning the  
34 collection of fees by the Arkansas Department of Environmental Quality, are  
35 amended to read as follows:

36 (1) Each landfill permittee and each solid waste transporter

1 shall submit to the ~~Arkansas Department~~ Division of Environmental Quality on  
2 or before January 15, April 15, July 15, and October 15 of each year a  
3 quarterly report that accurately states the total weight or volume of solid  
4 waste received at the landfill or transported out of state during the quarter  
5 just completed;

6 (2) On or before January 15, April 15, July 15, and October 15  
7 of each year, each landfill permittee and solid waste transporter shall pay  
8 to the ~~department~~ division the full amount of disposal fees due for the  
9 quarter just completed;

10  
11 SECTION 225. Arkansas Code § 8-6-607(4)(B), concerning the collection  
12 of fees by the Arkansas Department of Environmental Quality, is amended to  
13 read as follows:

14 (B) The Marketing Recyclables Program Fund shall be  
15 administered by the ~~department~~ division and used by the panel for the  
16 administration and performance of the panel's duties; and

17  
18 SECTION 226. Arkansas Code § 8-6-608 is amended to read as follows:  
19 8-6-608. Penalties.

20 Failure of the permittee or solid waste transporter to pay the fees  
21 assessed by the ~~Arkansas Department~~ Division of Environmental Quality  
22 provides grounds for administrative or civil enforcement action. Sanctions  
23 may include civil penalties as provided in the Arkansas Solid Waste  
24 Management Act, § 8-6-201 et seq., or the revocation of the solid waste  
25 disposal or solid waste transporter permit.

26  
27 SECTION 227. Arkansas Code § 8-6-615(a)(1)(A), concerning reporting  
28 requirements and distribution of funds to regional solid waste management  
29 programs, is amended to read as follows:

30 (a)(1)(A) Funds collected under this subchapter and deposited into the  
31 State Treasury to the credit of the Solid Waste Management and Recycling  
32 Fund, less up to twenty percent (20%) for administrative support for the  
33 ~~Arkansas Department~~ Division of Environmental Quality, shall be allocated  
34 annually to each of the approved regional solid waste management districts  
35 utilizing a combination of the two (2) methods stated in subsections (b) and  
36 (c) of this section.

1  
2 SECTION 228. Arkansas Code § 8-6-615(b)(1)(A) and (B), concerning  
3 reporting requirements and distribution of funds to regional solid waste  
4 management programs, are amended to read as follows:

5 (b)(1)(A) The ~~department~~ division shall determine the amount of funds  
6 within each planning and development district organized under § 14-166-201 et  
7 seq., and recognized by the Governor, based on the same distribution as  
8 general revenue support is distributed to the planning and development  
9 districts in the current fiscal year.

10 (B) The ~~department~~ division shall adjust the distribution  
11 described in subdivision (b)(1)(A) of this section within the planning and  
12 development districts to coincide with the boundaries of the regional solid  
13 waste management districts by determining each county's share of the funds  
14 available within each planning and development district.

15  
16 SECTION 229. Arkansas Code § 8-6-615(d)(1), concerning reporting  
17 requirements and distribution of funds to regional solid waste management  
18 programs, is amended to read as follows:

19 (d)(1) After August 1, 2017, and for each subsequent fiscal year, each  
20 regional solid waste management board that receives funds under this section  
21 shall provide a report by November 1 to the ~~department~~ division that explains  
22 how the board spent the funding received under this section in the previous  
23 fiscal year.

24  
25 SECTION 230. Arkansas Code § 8-6-615(d)(3), concerning reporting  
26 requirements and distribution of funds to regional solid waste management  
27 programs, is amended to read as follows:

28 (3) The report shall be in a spreadsheet form as prescribed by  
29 the ~~department~~ division.

30  
31 SECTION 231. Arkansas Code § 8-6-701 is amended to read as follows:  
32 8-6-701. Purpose – Legislative findings – Construction.

33 The purpose of this subchapter is to protect the public health and the  
34 state's environmental quality by establishing regional solid waste management  
35 and planning. The current system, relying upon solid waste management by  
36 individual counties and municipalities, has fostered present conditions in

1 which certain areas of the state are facing capacity shortages of crisis  
2 proportions, while others experience a surfeit of capacity with individual  
3 disposal facilities which cannot muster the resources for environmentally  
4 responsible operators. Given these disparate environmental and economic  
5 concerns, the General Assembly concludes that regional solid waste management  
6 and planning, under the oversight of the ~~Arkansas Department~~ Division of  
7 Environmental Quality and the Arkansas Pollution Control and Ecology  
8 Commission, is essential to address the imminent and future needs of the  
9 state. The terms and obligations of this subchapter shall be liberally  
10 construed so as to achieve remedial intent.

11  
12 SECTION 232. Arkansas Code § 8-6-702(3) and (4), concerning the  
13 definitions of "department" and "director" under the laws governing regional  
14 solid waste management districts and boards, are repealed.

15 ~~(3) "Department" means the Arkansas Department of Environmental~~  
16 ~~Quality;~~

17 ~~(4) "Director" means the Director of the Arkansas Department of~~  
18 ~~Environmental Quality;~~

19  
20 SECTION 233. Arkansas Code § 8-6-702(9), concerning the definition of  
21 "materials in the recycling process" under the laws governing regional solid  
22 waste management districts and boards, is amended as follows:

23 (9) "Materials in the recycling process" means ferrous and nonferrous metals  
24 diverted or removed from the solid waste stream so that they may be reused,  
25 as long as such materials are processed or handled using reasonably available  
26 processing equipment and control technology as determined by the ~~director~~  
27 Director of the Division of Environmental Quality, taking cost into account,  
28 and a substantial amount of the materials are consistently utilized to  
29 manufacture a product which otherwise would have been produced using virgin  
30 material;

31  
32 SECTION 234. Arkansas Code § 8-6-704(a)(5), concerning the powers and  
33 duties of regional solid waste management boards, is amended to read as  
34 follows:

35 (5) To petition the Director of the ~~Arkansas Department~~ Division  
36 of Environmental Quality to issue, continue in effect, revoke, modify, or

1 deny any permit for any element of a solid waste management system located  
2 within a district based on compliance or noncompliance with the solid waste  
3 management plan of the district;

4  
5 SECTION 235. Arkansas Code § 8-6-704(a)(13)(B), concerning the powers  
6 and duties of regional solid waste management boards, is amended to read as  
7 follows:

8 (B) However, notice of all such authorizations shall be  
9 submitted to the ~~Arkansas Department~~ Division of Environmental Quality within  
10 thirty (30) days and shall be incorporated into the regional needs assessment  
11 in its next regular update; and

12  
13 SECTION 236. Arkansas Code § 8-6-704(a)(14)(B), concerning the powers  
14 and duties of regional solid waste management boards, is amended to read as  
15 follows:

16 (B) However, notice of all such authorizations shall be  
17 submitted to the ~~department~~ division within thirty (30) days and shall be  
18 incorporated into the regional needs assessment in its next regular update.

19  
20 SECTION 237. Arkansas Code § 8-6-704(d)(4) and (5), concerning the  
21 powers and duties of regional solid waste management boards, are amended to  
22 read as follows:

23 (4) Copies of each audit report of a district shall be filed  
24 with the ~~department~~ division and with Arkansas Legislative Audit. In  
25 addition, one (1) copy of the audit report shall be kept for public  
26 inspection with the books and records of the district.

27 (5) Failure to provide a full and complete audit report, as  
28 required by this subchapter, shall prohibit future distribution of revenue  
29 from funding programs that are administered by the ~~department~~ division unless  
30 otherwise authorized by the director.

31  
32 SECTION 238. Arkansas Code § 8-6-705 is amended to read as follows:

33 8-6-705. Needs assessments.

34 (a) All needs assessments required by this subchapter are subject to  
35 review and approval for completeness by the ~~Arkansas Department~~ Division of  
36 Environmental Quality.

1 (b) Failure to provide complete assessments as required by this  
2 subchapter may provide the ~~department~~ division with grounds to initiate  
3 enforcement actions against the regional solid waste management boards or  
4 their component governmental entities. Pursuant to established administrative  
5 procedures, sanctions may be imposed, including, but not limited to, denial,  
6 discontinuation, or reimbursement of any grant funding administered by the  
7 ~~department~~ division to a regional solid waste management district or any of  
8 its component governmental entities.

9 (c) The ~~department~~ division may award grants to the districts for the  
10 development of the initial regional needs assessments, for the biennial  
11 updates, and for any other update required by the law.

12  
13 SECTION 239. Arkansas Code § 8-6-706(a), concerning solid waste  
14 landfill and transfer station permits, is amended to read as follows:

15 (a)(1) Before an application for a permit is submitted to the ~~Arkansas~~  
16 ~~Department~~ Division of Environmental Quality, an applicant for a solid waste  
17 landfill permit or a transfer station permit shall obtain a certificate of  
18 need from the regional solid waste management board that has jurisdiction  
19 over the proposed site, with the exception of permits for landfills when a  
20 private industry bears the expense of operating and maintaining the landfill  
21 solely for the disposal of waste generated by the industry or wastes of a  
22 similar kind or character under the Arkansas Solid Waste Management Act, § 8-  
23 6-201 et seq.

24 (2) The ~~department~~ division may deny any permit based upon the  
25 denial of a certificate of need by any regional solid waste management board.

26  
27 SECTION 240. Arkansas Code § 8-6-706(c), concerning solid waste  
28 landfill and transfer station permits, is amended to read as follows:

29 (c) Any interested party to a certificate of need determination by a  
30 board may appeal the decision to the Director of the ~~Arkansas Department~~  
31 Division of Environmental Quality pursuant to procedures adopted by the  
32 Arkansas Pollution Control and Ecology Commission. The director may issue a  
33 permit despite the denial of a certificate of need if the director finds upon  
34 appeal that the decision of the board was not supported by substantial  
35 evidence.

36



1 SECTION 241. Arkansas Code § 8-6-712(a)(3)(B), concerning regulation  
2 of solid waste disposal, is amended to read as follows:

3 (B) Provided, however, that notice of all such  
4 authorizations shall be submitted to the ~~Arkansas Department~~ Division of  
5 Environmental Quality within thirty (30) days and shall be incorporated into  
6 the district needs assessment in its next regular update;

7  
8 SECTION 242. Arkansas Code § 8-6-712(c)(2), concerning regulation of  
9 solid waste disposal, is amended to read as follows:

10 (2) Nothing in this section shall prohibit the collection or  
11 disposal of solid waste by a municipality with an existing permitted landfill  
12 with a twenty-five-year capacity as of January 1, 1991, when the city bears  
13 the expense of operating and maintaining the landfill and the landfill  
14 complies with United States Environmental Protection Agency and ~~department~~  
15 division regulations.

16  
17 SECTION 243. Arkansas Code § 8-6-716(a)(1)(A)(ii), concerning the  
18 submission of a regional needs assessment to the Arkansas Department of  
19 Environmental Quality, is amended to read as follows:

20 (ii) Such regional needs assessment shall be  
21 submitted for ~~Arkansas Department~~ Division of Environmental Quality review,  
22 and the Director of the ~~Arkansas Department~~ Division of Environmental Quality  
23 shall approve or disapprove it within ninety (90) days after submission.

24  
25 SECTION 244. Arkansas Code § 8-6-716(a)(1)(B)(ii), concerning the  
26 submission of a regional needs assessment to the Arkansas Department of  
27 Environmental Quality, is amended to read as follows:

28 (ii) The ~~department~~ division may, at its discretion,  
29 stagger the due dates by random selection so that approximately one fourth  
30 ( $\frac{1}{4}$ ) of the districts will submit a regional needs assessment each year.

31  
32 SECTION 245. Arkansas Code § 8-6-716(a)(1)(C)(i), concerning the  
33 submission of a regional needs assessment to the Arkansas Department of  
34 Environmental Quality, is amended to read as follows:

35 (C)(i) The ~~department~~ division will notify in writing the  
36 districts of the date on which their regional needs assessments are due.

1  
2 SECTION 246. Arkansas Code § 8-6-720(b), concerning the opportunity to  
3 recycle and recyclable materials collection centers, is amended to read as  
4 follows:

5 (b) The ~~Arkansas Department~~ Division of Environmental Quality shall  
6 determine by regulation the adequacy of the facilities and the number and  
7 type of recyclable materials for which the services in this section must be  
8 provided.

9  
10 SECTION 247. Arkansas Code § 8-6-723(a)(2), concerning the alternative  
11 formation of original districts, is amended to read as follows:

12 (2) The creation of the district shall be effective upon the  
13 Director of the ~~Arkansas Department~~ Division of Environmental Quality's  
14 receipt of written notice in the form of a joint resolution by the local  
15 governments.

16  
17 SECTION 248. Arkansas Code § 8-6-723(b)(1), concerning the alternative  
18 formation of original districts, is repealed.

19 ~~(b)(1) In lieu of forming a district under any other provision of this~~  
20 ~~subchapter, a district may be created by a resolution of the governing body~~  
21 ~~of any authority created under the Joint County and Municipal Solid Waste~~  
22 ~~Disposal Act, § 14-233-101 et seq., which includes a county having a~~  
23 ~~population of at least sixty thousand (60,000) persons and which has made~~  
24 ~~application to the Arkansas Department Division of Environmental Quality for~~  
25 ~~a solid waste disposal permit on or before January 1, 1991.~~

26  
27 SECTION 249. Arkansas Code § 8-6-901(2) and (3), concerning the  
28 definitions of "department" and "director" under the laws governing licensing  
29 of operators of solid waste management facilities, are repealed.

30 ~~(2) "Department" means the Arkansas Department of Environmental~~  
31 ~~Quality;~~

32 ~~(3) "Director" means the Director of the Arkansas Department of~~  
33 ~~Environmental Quality or the director's delegate or representative;~~

34  
35 SECTION 250. Arkansas Code § 8-6-901(4), concerning the definition of  
36 "illegal dumps control officer" under the laws governing licensing of

1 operators of solid waste management facilities, is amended to read as  
2 follows:

3 (4) "Illegal dumps control officer" means an individual employed  
4 by an authorized solid waste management district within this state, a county  
5 government within this state, or a pollution control inspector or other  
6 representative of the ~~department~~ Division of Environmental Quality who is  
7 empowered to ensure compliance with any state law prohibiting the illegal  
8 dumping of solid wastes;

9  
10 SECTION 251. Arkansas Code § 8-6-901(5), concerning the definitions of  
11 "license" under the laws governing licensing of operators of solid waste  
12 management facilities, is amended to read as follows:

13 (5) "License" means a certificate of competency issued by the  
14 ~~director~~ Director of the Division of Environmental Quality to solid waste  
15 management facility operators and illegal dumps control officers who have met  
16 the requirements of the licensing program;

17  
18 SECTION 252. Arkansas Code § 8-6-901(6), concerning the definition of  
19 "licensing committee" under the laws governing licensing of operators of  
20 solid waste management facilities, is amended to read as follows:

21 (6) "Licensing committee" means the committee of solid waste  
22 management facility managers, operators, or technicians established in this  
23 subchapter to assist and advise the commission and the ~~department~~ division in  
24 the examining and licensing of operators of solid waste management  
25 facilities;

26  
27 SECTION 253. Arkansas Code § 8-6-903(a), concerning licenses required  
28 to operate a solid waste management facility, is amended to read as follows:

29 (a) It shall be illegal for any county, municipality, governmental  
30 subdivision, public or private corporation, or other person to operate a  
31 solid waste management facility unless the competency of the operator is duly  
32 licensed by the Director of the ~~Arkansas Department~~ Division of Environmental  
33 Quality under the provisions of this subchapter.

34  
35 SECTION 254. Arkansas Code § 8-6-904(a)(1), concerning the creation of  
36 a licensing committee to advise and assist the Arkansas Pollution Control and

1 Ecology Commission and the Arkansas Department of Environmental Quality, is  
2 amended to read as follows:

3 (a)(1) There is created a licensing committee to advise and assist the  
4 Arkansas Pollution Control and Ecology Commission and the ~~Arkansas Department~~  
5 Division of Environmental Quality in the administration of the licensing  
6 program.

7  
8 SECTION 255. Arkansas Code § 8-6-904(a)(2)(A), concerning the creation  
9 of a licensing committee to advise and assist the Arkansas Pollution Control  
10 and Ecology Commission and the Arkansas Department of Environmental Quality,  
11 is amended to read as follows:

12 (A) Three (3) members, to be appointed by the commission,  
13 shall be solid waste management facility operators licensed by the ~~department~~  
14 division;

15  
16 SECTION 256. Arkansas Code § 8-6-904(a)(2)(H), concerning the creation  
17 of a licensing committee to advise and assist the Arkansas Pollution Control  
18 and Ecology Commission and the Arkansas Department of Environmental Quality,  
19 is amended to read as follows:

20 (H) One (1) member, to be appointed by the Director of the  
21 ~~Arkansas Department~~ Division of Environmental Quality, shall be a qualified  
22 member of his or her staff who shall serve ex officio with no vote as  
23 executive secretary of the committee.

24  
25 SECTION 257. Arkansas Code § 8-6-905(a), concerning the powers and  
26 duties of the Arkansas Pollution Control and Ecology Commission, is amended  
27 to read as follows:

28 (a) The Arkansas Pollution Control and Ecology Commission, with the  
29 advice and assistance of the licensing committee, is given and charged with  
30 the power and duty to adopt rules and regulations implementing and  
31 effectuating such powers and duties of the ~~Arkansas Department~~ Division of  
32 Environmental Quality and the committee under this subchapter as may be  
33 necessary for the administration and enforcement of this subchapter.

34  
35 SECTION 258. The introductory language of Arkansas Code § 8-6-905(b),  
36 concerning the powers and duties of the Arkansas Pollution Control and

1 Ecology Commission, is amended to read as follows:

2 (b) The ~~department~~ division is charged with the responsibility of  
3 administering and enforcing this subchapter, with the advice and assistance  
4 of the committee, and is given and charged with the following powers and  
5 duties:

6  
7 SECTION 259. Arkansas Code § 8-6-905(b)(1)(B), concerning the powers  
8 and duties of the Arkansas Pollution Control and Ecology Commission, is  
9 amended to read as follows:

10 (B) This duty may be delegated by the ~~department~~ division  
11 to the administrator of any approved course;

12  
13 SECTION 260. Arkansas Code § 8-6-905(c)(1) and (2), concerning the  
14 powers and duties of the Arkansas Pollution Control and Ecology Commission,  
15 are amended to read as follows:

16 (1) Conduct inquiries and establish findings necessary to advise  
17 the commission and the ~~department~~ division on irregularities encountered in  
18 the management of the licensing program;

19 (2) Conduct inquiries and establish facts necessary to advise  
20 the commission and the ~~department~~ division on the actions of licensees; and  
21

22 SECTION 261. Arkansas Code § 8-6-906(b), concerning the classification  
23 of a license, is amended to read as follows:

24 (b) The Director of the ~~Arkansas Department~~ Division of Environmental  
25 Quality, with the advice and assistance of the licensing committee, shall  
26 license persons according to their qualifications to successfully operate  
27 solid waste management facilities within the classifications established and  
28 effectuated by rules and regulations promulgated by the commission.

29  
30 SECTION 262. Arkansas Code § 8-6-907 is amended to read as follows:  
31 8-6-907. Licensing.

32 All operators in responsible charge of public and private solid waste  
33 management facilities shall be duly licensed and certified as competent by  
34 the Director of the ~~Arkansas Department~~ Division of Environmental Quality  
35 under the provisions of this subchapter and under such rules and regulations  
36 as the Arkansas Pollution Control and Ecology Commission may adopt, with the

1 advice and assistance of the licensing committee, pursuant to the authority  
 2 of this subchapter.

3  
 4 SECTION 263. Arkansas Code § 8-6-908(a)(1), concerning eligibility,  
 5 reciprocity, and licensing by the Director of the Arkansas Department of  
 6 Environmental Quality, is amended to read as follows:

7 (a)(1) The Director of the ~~Arkansas Department~~ Division of  
 8 Environmental Quality shall license and certify all applicants for licenses  
 9 under this subchapter who satisfy the requirements of this subchapter and the  
 10 rules and regulations issued pursuant thereto.

11  
 12 SECTION 264. Arkansas Code § 8-6-908(b), concerning eligibility,  
 13 reciprocity, and licensing by the Director of the Arkansas Department of  
 14 Environmental Quality, is amended to read as follows:

15 (b) All operators of solid waste management facilities within the  
 16 state shall apply to the ~~Arkansas Department~~ Division of Environmental  
 17 Quality for a license.

18  
 19 SECTION 265. Arkansas Code § 8-6-909(b), concerning fees for licenses,  
 20 examinations, and certifications, is amended to read as follows:

21 (b) All of the fees shall be deposited into the ~~Arkansas Department~~  
 22 Division of Environmental Quality Fee Trust Fund, as established in § 8-1-  
 23 105.

24  
 25 SECTION 266. Arkansas Code § 8-6-1001(2) and (3), concerning the  
 26 definitions of "department" and "director" under the laws regarding the  
 27 Landfill Post-Closure Trust Fund, are repealed.

28 ~~(2) "Department" means the Arkansas Department of Environmental~~  
 29 ~~Quality;~~

30 ~~(3) "Director" means the Director of the Arkansas Department of~~  
 31 ~~Environmental Quality;~~

32  
 33 SECTION 267. Arkansas Code § 8-6-1001(6), concerning the definition of  
 34 "post-closure corrective action" under the laws regarding the Landfill Post-  
 35 Closure Trust Fund, is amended to read as follows:

36 (6) "Post-closure corrective action" means any measures deemed

1 necessary by the ~~director~~ Director of the Division of Environmental Quality  
2 to prevent or abate contamination of the environment from any landfill which  
3 has been certified as properly closed by the ~~department~~ Division of  
4 Environmental Quality;

5  
6 SECTION 268. Arkansas Code § 8-6-1002(a)(3), concerning the creation  
7 of the Landfill Post-Closure Trust Fund, is amended to read as follows:

8 (3) Moneys received into the fund may also be used by the  
9 ~~Arkansas Department~~ Division of Environmental Quality for administrative  
10 purposes at a level not to exceed three hundred thousand dollars (\$300,000)  
11 annually with an annual escalator not to exceed three percent (3%).

12  
13 SECTION 269. Arkansas Code § 8-6-1002(b), concerning the creation of  
14 the Landfill Post-Closure Trust Fund, is amended to read as follows:

15 (b)(1) The fund shall be administered by the ~~department~~ division,  
16 which shall authorize funding and administrative expenditures from the fund  
17 according to the provisions of this subchapter.

18 (2)(A) The fund shall be administered by the ~~department~~ division  
19 and shall be used by the ~~department~~ division for landfill post-closure  
20 corrective action.

21 (B) The fund shall be used only if the Director of the  
22 ~~Arkansas Department~~ Division of Environmental Quality determines that:

23 (i) A landfill which is no longer receiving waste,  
24 regardless of when it ceased operating, is causing groundwater contamination  
25 or is causing other contamination that is a hazard to public health or  
26 endangers the environment; and

27 (ii) The owner or operator of the landfill site has  
28 expended at least ten thousand dollars (\$10,000) toward corrective action,  
29 unless the owner or operator cannot be located or the director determines an  
30 emergency exists necessitating immediate corrective action.

31 (3) The fund shall be administered by the ~~department~~ division  
32 and may be used by the ~~department~~ division to complete all activities  
33 necessary for the closure of a permitted waste tire processing or disposal  
34 site that is owned or operated by a regional solid waste management district  
35 if the ~~department~~ division determines that the district lacks sufficient  
36 funds to complete closure of the permitted waste tire processing or disposal

1 site.

2

3 SECTION 270. Arkansas Code § 8-6-1002(e), concerning the creation of  
4 the Landfill Post-Closure Trust Fund, is amended to read as follows:

5 (e)(1) An owner or operator of a permitted landfill shall establish  
6 and at all times maintain financial assurance for the post-closure  
7 maintenance of the landfill. At a minimum, each owner or operator shall  
8 provide no less than twenty percent (20%) of estimated post-closure  
9 maintenance costs through a financial mechanism readily negotiable by the  
10 ~~department~~ division to cash funds, for example, a letter of credit, surety  
11 bond, irrevocable trust, insurance, or other mechanism approved by the  
12 ~~department~~ division, upon default by the owner and operator of post-closure  
13 obligations.

14 (2) If, after proper closure of a landfill, the ~~department~~  
15 division reasonably determines that the owner or operator cannot be located  
16 or cannot otherwise satisfy, in whole or part, post-closure maintenance  
17 obligations, the ~~department~~ division is authorized to expend the necessary  
18 funds from the fund to satisfy the requirements of state and federal law and  
19 to prevent or abate releases to the environment.

20 (3) If the ~~department~~ division is required to expend funds from  
21 the fund due to the failure of an owner or operator to meet the requirements  
22 of this subsection, the ~~department~~ division shall pursue collection and  
23 recovery of the funds by issuing an administrative order notifying the owner  
24 or operator by certified mail at the last known address of the owner or  
25 operator of the action taken by the ~~department~~ division and the amount of  
26 funds expended from the fund and that the administrative order may be  
27 appealed in accordance with the ~~department's~~ division's regulations.

28

29 SECTION 271. Arkansas Code § 8-6-1004(1) and (2), concerning the  
30 collection of fees regarding the Landfill Post-Closure Trust Fund, are  
31 amended to read as follows:

32 (1) Each landfill permittee and each solid waste transporter  
33 shall submit to the ~~Arkansas Department~~ Division of Environmental Quality on  
34 or before January 15, April 15, July 15, and October 15 of each year a  
35 quarterly report which accurately states the total weight or volume of solid  
36 waste received at the landfill or transported out of state during the



1 previous quarter;

2 (2) On or before January 15, April 15, July 15, and October 15  
3 of each year, each landfill permittee and solid waste transporter shall pay  
4 to the ~~department~~ division the full amount of such disposal fees due for the  
5 previous quarter; and

6  
7 SECTION 272. Arkansas Code § 8-6-1005 is amended to read as follows:  
8 8-6-1005. Penalties.

9 Failure of the permittee or solid waste transporter to pay the fees  
10 assessed by the ~~Arkansas Department~~ Division of Environmental Quality shall  
11 provide grounds for administrative or civil enforcement action. Sanctions may  
12 include civil penalties as provided in the Arkansas Solid Waste Management  
13 Act, § 8-6-201 et seq., or the revocation of the solid waste disposal or  
14 solid waste transporter permit.

15  
16 SECTION 273. Arkansas Code § 8-6-1103(3), concerning the definition of  
17 "director" under the laws regarding landfill service areas, is repealed.

18 ~~(3) "Director" means the Director of the Arkansas Department of~~  
19 ~~Environmental Quality;~~

20  
21 SECTION 274. Arkansas Code § 8-6-1104 is amended to read as follows:  
22 8-6-1104. Transportation of solid waste outside district.

23 In any instance in which a landfill has a useful life of less than one  
24 and one-half ( $1\frac{1}{2}$ ) years, the Director of the ~~Arkansas Department~~ Division of  
25 Environmental Quality may authorize any city utilizing that landfill to  
26 transport solid waste outside the boundaries of the regional solid waste  
27 management district. Provided, however, in no instance shall that authority  
28 be extended after a landfill with a useful life in excess of one and one-half  
29 ( $1\frac{1}{2}$ ) years becomes available within the district for accepting the solid  
30 waste of the city.

31  
32 SECTION 275. Arkansas Code § 8-6-1105(b), concerning an exemption of  
33 expansion outside district, is amended to read as follows:

34 (b) Landfill capacity shall be determined by the Director of the  
35 ~~Arkansas Department~~ Division of Environmental Quality.

36

1 SECTION 276. Arkansas Code § 8-6-1105(c)(3), concerning an exemption  
2 of expansion outside district, is amended to read as follows:

3 (3) No new landfill shall be allowed to receive solid waste  
4 outside the boundaries of the district in which it is located unless it is a  
5 landfill where a private industry bears the expense of operating and  
6 maintaining the landfill solely for the disposal of wastes generated by the  
7 industry or of wastes of a similar kind or character and such industry has  
8 commenced, prior to March 1, 1991, the process for obtaining a permit by  
9 issuing notice to the local government having jurisdiction, as required under  
10 the rules and regulations of the Arkansas Department of Environmental  
11 Quality, now the Division of Environmental Quality.

12  
13 SECTION 277. Arkansas Code § 8-6-1105(c)(4), concerning an exemption  
14 of expansion outside district, is amended to read as follows:

15 (4)(A) No new applications for landfill permits seeking to  
16 dispose of solid waste originating outside of a district or that propose to  
17 dispose of solid waste originating from outside such district shall be  
18 accepted or processed by the ~~Arkansas Pollution Control and Ecology~~  
19 ~~Commission~~ Division of Environmental Quality or a regional solid waste  
20 management board, unless such applications were pending before the ~~department~~  
21 Arkansas Department of Environmental Quality, now the Division of  
22 Environmental Quality on March 1, 1989.

23 (B) Provided, the prohibition contained in this subsection  
24 shall not apply to new applications for landfill permits if the landfill is  
25 one where a private industry bears the expense of operating and maintaining  
26 the landfill solely for the disposal of wastes generated by the industry, or  
27 of wastes of a similar kind or character, and such industry has commenced,  
28 prior to March 1, 1991, the process for obtaining a permit by issuing notice  
29 to the local government having jurisdiction, as required under the rules and  
30 regulations of the ~~department~~ Arkansas Department of Environmental Quality,  
31 now the Division of Environmental Quality.

32  
33 SECTION 278. Arkansas Code § 8-6-1206(c)(1), concerning the adoption  
34 of disposal criteria for incinerator ash, is amended to read as follows:

35 (c)(1) The monofill requirement created under this subchapter does not  
36 apply if the owner or operator demonstrates to the ~~Arkansas Department~~

1 Division of Environmental Quality that the incinerator ash to be disposed of  
2 in the Class 1 landfill is received from incinerators that only combust yard  
3 waste or other natural vegetative debris, including vegetative storm debris,  
4 tree trimmings, and land-clearing debris.

5  
6 SECTION 279. Arkansas Code § 8-6-1301(a), concerning legislative  
7 findings and purpose regarding obtaining permits from the Arkansas Department  
8 of Environmental Quality for medical waste incineration facilities, is  
9 amended to read as follows:

10 (a) The General Assembly has found that there is an increased interest  
11 in obtaining permits from the ~~Arkansas Department~~ Division of Environmental  
12 Quality for the purpose of constructing and operating commercial medical  
13 waste incineration facilities. The Clean Air Act in 42 U.S.C. § 7429(a)(1)(C)  
14 has directed the United States Environmental Protection Agency to promulgate  
15 regulations concerning these commercial medical waste incineration  
16 facilities. The General Assembly has determined that it is necessary to delay  
17 the issuance of permits to these commercial medical waste incineration  
18 facilities until those regulations are promulgated in order to ensure that  
19 any permits issued will be based on the latest available information  
20 concerning technology and safety as set forth in the federal regulations.

21  
22 SECTION 280. Arkansas Code § 8-6-1302(2) and (3), concerning the  
23 definitions of "department" and "director" under the laws regarding  
24 commercial medical waste incineration facilities, are repealed.

25 ~~(2) "Department" means the Arkansas Department of Environmental~~  
26 ~~Quality;~~

27 ~~(3) "Director" means the Director of the Arkansas Department of~~  
28 ~~Environmental Quality;~~

29  
30 SECTION 281. Arkansas Code § 8-6-1304(c)(2), concerning the  
31 applicability of laws to medical waste incineration facilities, is amended to  
32 read as follows:

33 (2) For the purposes of construing this subsection and the  
34 application of this subchapter, initiation of operations has not occurred  
35 until the ~~Arkansas Department~~ Division of Environmental Quality has approved  
36 the installation of all permitted pollution control equipment and the

1 commercial medical waste incineration facility is receiving medical waste for  
2 incineration.

3  
4 SECTION 282. Arkansas Code § 8-6-1305 is amended to read as follows:

5 8-6-1305. Permits – Procedure generally – Definition.

6 (a) The ~~Arkansas Department~~ Division of Environmental Quality shall  
7 not accept any applications or issue any permits for the construction or  
8 operation of any commercial medical waste incineration facilities until the  
9 federal regulations promulgated pursuant to 42 U.S.C. § 7429(a)(1)(C) become  
10 effective or the United States Environmental Protection Agency's dioxin  
11 reassessment is finalized, whichever is later.

12 (b) Any person applying for a permit or a permit modification to  
13 construct and operate a commercial medical waste incineration facility shall  
14 complete the following criteria at least thirty (30) days prior to submitting  
15 a permit application to the ~~department~~ division:

16 (1) Written notification by certified mail to each property  
17 owner and resident of any property adjacent to the proposed site of the  
18 intent to apply for a permit or permit modification; and

19 (2) Publication of a public notice in the largest newspaper  
20 published in each county where the property which is the subject matter of  
21 the proposed commercial medical waste incineration facility permit or permit  
22 modification is located, and in at least one (1) newspaper of statewide  
23 circulation, of the intent to apply for a permit or a permit modification to  
24 construct and operate a commercial medical waste incineration facility.

25 (c) The ~~department~~ division shall provide written notice by certified  
26 mail of the proposed permit or permit modification to the mayor of the city  
27 and the county judge of the county where the property which is the subject  
28 matter of the permit application is located.

29 (d) The ~~department~~ division shall conduct a public hearing in the  
30 county in which the commercial medical waste incineration facility is to be  
31 located prior to the issuance of a final permit.

32 (e)(1)(A) Notwithstanding the general provisions of other laws,  
33 permits for the construction or operation of commercial medical waste  
34 incineration facilities shall not be transferable upon a change in ownership  
35 or control of a commercial medical waste incineration facility.

36 (B) Prior to any change in ownership or control of a

1 commercial medical waste incineration facility, the proposed new owner must  
2 apply for a new permit and abide by the requirements of § 8-1-106.

3 (C) The ~~department~~ division shall process the application  
4 as one for a new permit and apply the most current statutes, regulations,  
5 technological standards, and operational controls as conditions precedent for  
6 granting a permit or operational authority.

7 (2)(A) Any agreement or contract, written or oral, for a future  
8 transfer of operational control or ownership of a permitted commercial  
9 medical waste incineration facility or such an agreement or contract  
10 contingent upon the ~~department's~~ division's approval shall be subject to  
11 immediate disclosure to the ~~department~~ division pursuant to § 8-1-106.

12 (B) Upon such disclosure, the ~~department~~ division shall  
13 cause the intent to transfer ownership or control to be publicly noticed and  
14 produce the disclosure documentation required by § 8-1-106 for public  
15 inspection.

16 (C) After a reasonable period for public review, the  
17 ~~department~~ division shall issue a written determination as to whether the  
18 intended transfer of ownership or control should be approved, subject to the  
19 right of appeal provided by § 8-1-106(e).

20 (D) During the pendency of the ~~department's~~ division's and  
21 the public's review of the disclosure materials required by this section, any  
22 actions taken by the permittee or proposed transferee are at their own risk,  
23 and shall not be construed by the ~~department~~ division or the Arkansas  
24 Pollution Control and Ecology Commission as accruing equities in their favor.

25 (3) As used in this subsection:

26 (A) "Control" shall be presumed to reside with the owner,  
27 as defined herein, unless circumstances indicate that a person or entity  
28 other than an employee or agent of the owner is exercising ultimate decision-  
29 making authority regarding the construction or operation of a commercial  
30 medical waste incineration facility; and

31 (B) "Corporate ownership" shall be defined as a  
32 controlling or majority interest in a commercial medical waste incineration  
33 facility, either through outright ownership of stock or other indicia of  
34 title, or any equitable right to such title as construed from the totality of  
35 the circumstances.

36 (4) Any violation of this subsection shall constitute grounds

1 for permit revocation and imposition of the civil and criminal penalties  
2 authorized by § 8-4-103.

3 (f)(1) If the original permit was issued more than one (1) year prior  
4 to the initiation of incineration activities at a commercial medical waste  
5 incineration facility, the ~~department~~ division may review the conditions of  
6 the permit to determine whether good cause exists for modifying operating  
7 parameters to assure the maximum feasible control efficiency of emissions.

8 (2) Any modifications proposed by the ~~department~~ division must  
9 be supported by appropriate references to the scientific and engineering  
10 literature or documented studies conducted by the ~~department~~ division.

11  
12 SECTION 283. The introductory language of Arkansas Code § 8-6-1306(a),  
13 concerning the limitations of permits to construct or operate a commercial  
14 medical waste incineration facility granted by the Arkansas Department of  
15 Environmental Quality, is amended to read as follows:

16 (a) No permits may be issued by the ~~Arkansas Department~~ Division of  
17 Environmental Quality for the construction or operation of a commercial  
18 medical waste incineration facility in which any of the following factors are  
19 present:

20  
21 SECTION 284. Arkansas Code § 8-6-1307 is amended to read as follows:  
22 8-6-1307. Financial assurance guarantees.

23 (a)(1) Prior to initiating operations at a commercial medical waste  
24 incineration facility, the owner or operator must demonstrate:

25 (A) Evidence of liability insurance in such amount as the  
26 ~~Arkansas Department~~ Division of Environmental Quality may determine to be  
27 necessary for the protection of public health and safety and protection of  
28 the environment; and

29 (B) Evidence of financial responsibility in such form and  
30 amount as the ~~department~~ division may determine to be necessary to ensure  
31 that, upon abandonment, cessation, or interruption of the operation of the  
32 commercial medical waste incineration facility, all appropriate measures can  
33 be taken to prevent present and future damage to the public health and safety  
34 and to the environment.

35 (2) In determining the adequacy of the evidence submitted, the  
36 ~~department~~ division may consider credible evidence indicating that the

1 permittee is undercapitalized, insolvent, or otherwise financially incapable  
2 of assuring environmentally sound operations at the permitted commercial  
3 medical waste incineration facility.

4 (b) In determining the nature of financial assurance guarantees  
5 required by subsection (a) of this section, the ~~department~~ division and the  
6 permittee shall follow, to the extent applicable, the federal regulations  
7 governing financial assurance of facilities governed by Subtitle D of the  
8 Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6941 et seq.

9  
10 SECTION 285. Arkansas Code § 8-6-1503 is amended to read as follows:

11 8-6-1503. ~~Department's~~ Division's permitting authority.

12 The ~~Arkansas Department~~ Division of Environmental Quality shall not  
13 process any application for a permit subject to § 8-6-1504 until the affected  
14 local and regional authorities have issued definitive findings regarding the  
15 criteria set out in § 8-6-1504.

16  
17 SECTION 286. Arkansas Code § 8-6-1504(a)(2), concerning a rebuttable  
18 presumption against certain sites for construction of a high impact solid  
19 waste management facility, is amended to read as follows:

20 (2) This presumption shall be honored by the ~~Arkansas Department~~  
21 Division of Environmental Quality, the regional solid waste management board  
22 with jurisdiction over the site, and any other governmental entity with  
23 permitting or zoning authority concerning any facility.

24  
25 SECTION 287. Arkansas Code § 8-6-1601(c)(1), concerning the purpose of  
26 solid waste management facilities, is amended to read as follows:

27 (c)(1) After an application to operate a solid waste management  
28 facility has been reviewed and approved but before a permit is issued, the  
29 applicant shall post with the ~~Arkansas Department~~ Division of Environmental  
30 Quality, on forms prescribed by the ~~department~~ division in accordance with  
31 the regulations issued under this subchapter, a corporate surety bond for  
32 performance or an acceptable alternative, such as a certificate of deposit or  
33 letter of credit payable to the ~~department~~ division and conditioned upon  
34 faithful performance of all requirements of this subchapter, the regulations  
35 issued pursuant to this subchapter, and the permit, including, but not  
36 limited to, proper closure of the solid waste management facility.

1  
2 SECTION 288. Arkansas Code § 8-6-1601(5), concerning the definition of  
3 "department" under the laws regarding solid waste management facilities, is  
4 repealed.

5 ~~(5) "Department" means the Arkansas Department of Environmental~~  
6 ~~Quality;~~

7  
8 SECTION 289. Arkansas Code § 8-6-1603(d)(4)(A), concerning procedures  
9 of solid waste management facilities, is amended to read as follows:

10 (4)(A) A municipality or county that owns or operates a solid  
11 waste management facility receiving any non-RCRA, Subtitle D waste may, in  
12 lieu of a performance bond, execute a contract of obligation with the  
13 Director of the ~~Arkansas Department~~ Division of Environmental Quality.

14  
15 SECTION 290. Arkansas Code § 8-6-1604(c) and (d), concerning the Solid  
16 Waste Performance Bond Fund, are amended to read as follows:

17 (c) The fund shall be administered by the ~~Arkansas Department~~ Division  
18 of Environmental Quality and will be used to accomplish remedial action,  
19 including closure of lands covered by performance bonds forfeited under this  
20 subchapter.

21 (d) Moneys received annually into the fund shall be used by the  
22 ~~department~~ division for the administration of remedial actions performed as a  
23 result of this subchapter.

24  
25 SECTION 291. Arkansas Code § 8-6-1703(e), concerning restrictions on  
26 the open burning of yard waste, is amended to read as follows:

27 (e) Nothing in this subchapter shall be construed as impairing the  
28 authority of the ~~Arkansas Department~~ Division of Environmental Quality to  
29 abate reasonably likely exceedances of National Ambient Air Quality  
30 Standards.

31  
32 SECTION 292. Arkansas Code § 8-6-1801 is amended to read as follows:

33 8-6-1801. Management plan – Substitution.

34 If the ~~Arkansas Department~~ Division of Environmental Quality requires a  
35 person to obtain an animal waste management plan, including a permit  
36 application, prepared by a professional engineer as defined in § 17-30-101,



1 the person may substitute a plan prepared under the supervision of a  
2 professional engineer employed by one (1) of the following agencies:

- 3 (1) A conservation district;
- 4 (2) The Arkansas Natural Resources Commission;
- 5 (3) The United States Natural Resources Conservation Service; or
- 6 (4) The University of Arkansas Cooperative Extension Service.

7  
8 SECTION 293. Arkansas Code § 8-6-1902(1), concerning the  
9 responsibility for the development of the Statewide Solid Waste Management  
10 Plan, is amended to read as follows:

11 (1) The ~~Arkansas Department~~ Division of Environmental Quality  
12 has been charged by the General Assembly with the responsibility of  
13 developing the Statewide Solid Waste Management Plan which, when feasible,  
14 gives emphasis to regional planning;

15  
16 SECTION 294. Arkansas Code § 8-6-1903(3), concerning the definition of  
17 "department" under the laws regarding the Statewide Solid Waste Management  
18 Plan, is repealed.

19 ~~(3) "Department" means the Arkansas Department of Environmental~~  
20 ~~Quality.~~

21  
22 SECTION 295. The introductory language of Arkansas Code § 8-6-1904(a),  
23 concerning the development and implementation of the Statewide Solid Waste  
24 Management Plan by the Arkansas Department of Environmental Quality, is  
25 amended to read as follows:

26 (a) The ~~Arkansas Department~~ Division of Environmental Quality shall  
27 develop the Statewide Solid Waste Management Plan to establish minimum  
28 requirements for all regional solid waste management plans, including  
29 requirements for:

30  
31 SECTION 296. Arkansas Code § 8-6-1904(c)(2), concerning the  
32 development and implementation of the Statewide Solid Waste Management Plan  
33 by the Arkansas Department of Environmental Quality, is amended to read as  
34 follows:

35 (2) Denial, discontinuation, or reimbursement of any funding  
36 administered by the ~~department~~ division to the board.

1  
2 SECTION 297. Arkansas Code § 8-7-202(4), concerning the purpose of the  
3 Arkansas Hazardous Waste Management Act of 1979, is amended to read as  
4 follows:

5 (4) Qualify the ~~Arkansas Department~~ Division of Environmental  
6 Quality to adopt, administer, and enforce a hazardous waste program pursuant  
7 to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et  
8 seq.; and

9  
10 SECTION 298. Arkansas Code § 8-7-203(2) and (3), concerning the  
11 definitions of "department" and "director" under the Arkansas Hazardous Waste  
12 Management Act of 1979, are repealed.

13 ~~(2) "Department" means the Arkansas Department of Environmental~~  
14 ~~Quality or its successor;~~

15 ~~(3) "Director" means the Director of the Arkansas Department of~~  
16 ~~Environmental Quality or his or her successor;~~

17  
18 SECTION 299. The introductory language of Arkansas Code § 8-7-  
19 203(7)(A), concerning the definition of "hazardous waste" under the Arkansas  
20 Hazardous Waste Management Act of 1979, is amended to read as follows:

21 (7)(A) "Hazardous waste" means any waste or combination of  
22 wastes of a solid, liquid, contained gaseous, or semisolid form which,  
23 because of its quantity, concentration, or physical, chemical, or infectious  
24 characteristics, may in the judgment of the ~~department~~ Division of  
25 Environmental Quality:

26  
27 SECTION 300. Arkansas Code § 8-7-204(a)(1)(A), concerning criminal,  
28 civil, and administrative penalties under the Arkansas Hazardous Waste  
29 Management Act of 1979, is amended to read as follows:

30 (1)(A) Any person who violates any provision of this subchapter,  
31 who commits any unlawful act under this subchapter, or who violates any rule,  
32 regulation, or order of the Arkansas Pollution Control and Ecology Commission  
33 or the ~~Arkansas Department~~ Division of Environmental Quality shall be guilty  
34 of a misdemeanor.

35  
36 SECTION 301. Arkansas Code § 8-7-204(a)(2)(A)(i), concerning criminal,

1 civil, and administrative penalties under the Arkansas Hazardous Waste  
2 Management Act of 1979, is amended to read as follows:

3 (i) Violate any provision of this subchapter, commit  
4 any unlawful act under this subchapter, or violate any rule, regulation, or  
5 order of the commission or the ~~department~~ division, and leave the state or  
6 remove his or her person from the jurisdiction of this state; or

7  
8 SECTION 302. The introductory language of Arkansas Code § 8-7-204(b),  
9 concerning criminal, civil, and administrative penalties under the Arkansas  
10 Hazardous Waste Management Act of 1979, is amended to read as follows:

11 (b) Civil Penalties. The ~~department~~ division may institute a civil  
12 action in any court of competent jurisdiction to accomplish any of the  
13 following:

14  
15 SECTION 303. Arkansas Code § 8-7-204(b)(3), concerning criminal,  
16 civil, and administrative penalties under the Arkansas Hazardous Waste  
17 Management Act of 1979, is amended to read as follows:

18 (3) Recover all costs, expenses, and damages to the ~~department~~  
19 division and any other agency or subdivision of the state in enforcing or  
20 effectuating the provisions of this subchapter, including, but not limited  
21 to, natural resource damages;

22  
23 SECTION 304. Arkansas Code § 8-7-204(c), concerning criminal, civil,  
24 and administrative penalties under the Arkansas Hazardous Waste Management  
25 Act of 1979, is amended to read as follows:

26 (c) Any person who violates any provision of this subchapter and  
27 regulations, rules, permits, or plans issued pursuant to this subchapter may  
28 be assessed an administrative civil penalty not to exceed twenty-five  
29 thousand dollars (\$25,000) per violation. Each day of a continuing violation  
30 may be deemed a separate violation for purposes of civil penalty assessment.  
31 No civil penalty may be assessed until the person charged with the violation  
32 has been given the opportunity for a hearing in accordance with regulations  
33 adopted by the commission. All hearings and appeals arising under this  
34 subchapter shall be conducted in accordance with the procedures prescribed by  
35 §§ 8-4-205, 8-4-212, and 8-4-218 – 8-4-229. The procedures of this subsection  
36 may also be used to recover all costs, expenses, and damages to the

1 ~~department~~ division and any other agency or subdivision of the state in  
2 enforcing or effectuating the provisions of this subchapter, including, but  
3 not limited to, natural resource damages.

4  
5 SECTION 305. Arkansas Code § 8-7-204(e)(1), concerning criminal,  
6 civil, and administrative penalties under the Arkansas Hazardous Waste  
7 Management Act of 1979, is amended to read as follows:

8 (e)(1) All moneys collected as reimbursement for expenses, costs, and  
9 damages to the ~~department~~ division shall be deposited into the operating fund  
10 of the ~~department~~ division.

11  
12 SECTION 306. Arkansas Code § 8-7-204(e)(3), concerning criminal,  
13 civil, and administrative penalties under the Arkansas Hazardous Waste  
14 Management Act of 1979, is amended to read as follows:

15 (3)(A) In his or her discretion, the Director of the ~~Arkansas~~  
16 ~~Department~~ Division of Environmental Quality may authorize in-kind services  
17 as partial mitigation of cash penalties for use in projects or programs  
18 designed to advance environmental interests.

19 (B) The violator may provide in-kind services or cash  
20 contributions as directed by the ~~department~~ division by utilizing the  
21 violator's own expertise, by hiring and compensating subcontractors to  
22 perform the in-kind services, by arranging and providing financing for the  
23 in-kind services, or by other financial arrangements initiated by the  
24 ~~department~~ division in which the violator and the ~~department~~ division retain  
25 no monetary benefit, however remote.

26 (C) The in-kind services shall not duplicate or augment  
27 services already provided by the ~~department~~ division through appropriations  
28 of the General Assembly.

29  
30 SECTION 307. Arkansas Code § 8-7-205(3), concerning unlawful actions  
31 under the Arkansas Hazardous Waste Management Act of 1979, is amended to read  
32 as follows:

33 (3) Dispose of hazardous waste at any disposal site or facility  
34 other than one for which a permit has been issued by the ~~Arkansas Department~~  
35 Division of Environmental Quality pursuant to this subchapter; or  
36

1 SECTION 308. Arkansas Code § 8-7-208 is amended to read as follows:

2 8-7-208. Official agency for program and agreements.

3 (a) The ~~Arkansas Department~~ Division of Environmental Quality is  
4 designated as the official agency for the state for all purposes of the  
5 Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., and  
6 for the purpose of such other state or federal legislation as may be enacted  
7 to assist in the management of hazardous wastes.

8 (b)(1) The General Assembly encourages cooperative activities by the  
9 ~~department~~ division with other states for the improved management of  
10 hazardous wastes and, so far as is practicable, uniform state laws relating  
11 to the management of hazardous wastes and compacts between this and other  
12 states for the improved management of hazardous wastes.

13 (2) The ~~department~~ division may enter into agreements with the  
14 responsible authorities of the United States or of other states, subject to  
15 approval by the Governor, relative to policies, methods, means, and  
16 procedures to be employed in the management of hazardous wastes not  
17 inconsistent with the provisions of this subchapter and may carry out such  
18 agreements.

19  
20 SECTION 309. The introductory language of Arkansas Code § 8-7-209(a),  
21 concerning the powers and duties of the Arkansas Department of Environmental  
22 Quality and the Arkansas Pollution Control and Ecology Commission for  
23 hazardous waste management, is amended to read as follows:

24 (a) The ~~Arkansas Department~~ Division of Environmental Quality shall  
25 have the following powers and duties:

26  
27 SECTION 310. Arkansas Code § 8-7-209(a)(6), concerning the powers and  
28 duties of the Arkansas Department of Environmental Quality and the Arkansas  
29 Pollution Control and Ecology Commission for hazardous waste management, is  
30 amended to read as follows:

31 (6) To make such investigations and inspections and to hold such  
32 hearings, after notice, as the ~~Arkansas Department~~ Division of Environmental  
33 Quality may deem necessary or advisable for the discharge of the ~~Arkansas~~  
34 ~~Department~~ Division of Environmental Quality's duties under this subchapter  
35 and to ensure compliance with this subchapter and any orders, rules, and  
36 regulations issued pursuant thereto;

1  
2 SECTION 311. Arkansas Code § 8-7-209(a)(8)(A), concerning the powers  
3 and duties of the Arkansas Department of Environmental Quality and the  
4 Arkansas Pollution Control and Ecology Commission for hazardous waste  
5 management, is amended to read as follows:

6 (8)(A) To institute proceedings in the name of the ~~Arkansas~~  
7 ~~Department~~ Division of Environmental Quality in any court of competent  
8 jurisdiction to compel compliance with and to restrain any violation of the  
9 provisions of this subchapter or any rules, regulations, and orders issued  
10 pursuant thereto or any permit issued thereunder, and require the taking of  
11 such remedial measures as may be necessary or appropriate to implement or  
12 effectuate the provisions and purposes of this subchapter.

13  
14 SECTION 312. Arkansas Code § 8-7-209(a)(12), concerning the powers and  
15 duties of the Arkansas Department of Environmental Quality and the Arkansas  
16 Pollution Control and Ecology Commission for hazardous waste management, is  
17 amended to read as follows:

18 (12) In addition to the powers enumerated above, the ~~Arkansas~~  
19 ~~Department~~ Division of Environmental Quality shall have and may use in the  
20 administration and enforcement of this subchapter all of the powers which the  
21 ~~Arkansas Department~~ Division of Environmental Quality has under other laws  
22 administered by the ~~Arkansas Department~~ Division of Environmental Quality,  
23 including the Arkansas Water and Air Pollution Control Act, § 8-4-101 et  
24 seq., and the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

25  
26 SECTION 313. The introductory language of Arkansas Code § 8-7-  
27 209(b)(1), concerning the powers and duties of the Arkansas Department of  
28 Environmental Quality and the Arkansas Pollution Control and Ecology  
29 Commission for hazardous waste management, is amended to read as follows:

30 (1) To adopt, after notice and public hearing, and to  
31 promulgate, modify, repeal, and enforce rules and regulations regarding  
32 hazardous waste management as may be necessary or appropriate to implement or  
33 effectuate the purposes and intent of this subchapter and the powers and  
34 duties of the ~~Arkansas Department~~ Division of Environmental Quality under  
35 this subchapter, including, but not limited to, rules and regulations for:

36

1 SECTION 314. Arkansas Code § 8-7-209(b)(4) and (5), concerning the  
2 powers and duties of the Arkansas Department of Environmental Quality and the  
3 Arkansas Pollution Control and Ecology Commission for hazardous waste  
4 management, are amended to read as follows:

5 (4) Promulgation of rules and regulations governing  
6 administrative procedures for challenging or contesting ~~Arkansas Department~~  
7 Division of Environmental Quality actions;

8 (5) In the case of permitting or grants decisions, providing the  
9 right to appeal a permitting or grants decision rendered by the Director of  
10 the ~~Arkansas Department~~ Division of Environmental Quality or his or her  
11 delegatee;

12  
13 SECTION 315. Arkansas Code § 8-7-209(b)(8), concerning the powers and  
14 duties of the Arkansas Department of Environmental Quality and the Arkansas  
15 Pollution Control and Ecology Commission for hazardous waste management, is  
16 amended to read as follows:

17 (8) Make recommendations to the director regarding overall  
18 policy and administration of the ~~Arkansas Department~~ Division of  
19 Environmental Quality, provided, however, that the director shall always  
20 remain within the plenary authority of the Governor; and

21  
22 SECTION 316. Arkansas Code § 8-7-210 is amended to read as follows:

23 8-7-210. Existing rules, regulations, etc.

24 (a) All existing rules and regulations of the ~~Arkansas Department~~  
25 Division of Environmental Quality not inconsistent with the provisions of  
26 this subchapter relating to subjects embraced within this subchapter shall  
27 remain in full force and effect until expressly repealed, amended, or  
28 superseded by the Arkansas Pollution Control and Ecology Commission, insofar  
29 as the rules and regulations do not conflict with the provisions of this  
30 subchapter.

31 (b) All orders entered, permits granted, and pending legal proceedings  
32 instituted by the ~~department~~ division relating to subjects embraced within  
33 this subchapter shall remain unimpaired and in full force and effect until  
34 superseded by actions taken by the ~~department~~ division or commission under  
35 this subchapter.

36 (c) No existing civil or criminal remedies, public or private, for any

1 wrongful action shall be excluded or impaired by this subchapter.

2 (d) The provisions of this subchapter and the rules and regulations  
3 promulgated pursuant to this subchapter shall govern if they conflict with  
4 the provisions of the Arkansas Water and Air Pollution Control Act, § 8-4-101  
5 et seq., or the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or  
6 any action taken by the ~~department~~ division or commission under those laws.

7  
8 SECTION 317. Arkansas Code § 8-7-212 is amended to read as follows:  
9 8-7-212. Considerations in administration.

10 (a) In administering the provisions of this subchapter, the ~~Arkansas~~  
11 ~~Department~~ Division of Environmental Quality may adopt and give appropriate  
12 effect to variations within this state in climate, geology, population  
13 density, and such other factors as may be relevant to the management of  
14 hazardous waste, the establishment of standards and permit conditions, and to  
15 the siting of permitted facilities.

16 (b) To the extent practicable, the rules, regulations, and procedures  
17 adopted by the ~~department~~ division pursuant to this subchapter shall be  
18 consistent with other environmentally related rules, regulations, and  
19 procedures of the ~~department~~ division. In administering the provisions of  
20 this subchapter and of all other laws under the administration of the  
21 ~~department~~ division, the ~~department~~ division and the Arkansas Pollution  
22 Control and Ecology Commission shall coordinate and expedite the issuance of  
23 permits required by an applicant under one (1) or more laws, to the end of  
24 eliminating, insofar as practicable, any duplication of unnecessary time and  
25 expense to the applicant and the ~~department~~ division.

26 (c) The ~~department~~ division shall integrate all provisions of this  
27 subchapter with the appropriate provisions of all other laws which grant  
28 regulatory authority to the ~~department~~ division for purposes of  
29 administration and enforcement and shall avoid duplication to the maximum  
30 extent practicable.

31  
32 SECTION 318. Arkansas Code § 8-7-213 is amended to read as follows:  
33 8-7-213. Procedure generally.

34 The procedure of the ~~Arkansas Department~~ Division of Environmental  
35 Quality and the Arkansas Pollution Control and Ecology Commission for  
36 issuance of rules and regulations, conduct of hearings, notice, power of



1 subpoena, review of action on permits, right of appeal, presumptions,  
2 finality of actions, and related matters shall be as provided in § 8-4-101 et  
3 seq. and § 8-4-201 et seq., including, but not limited to, §§ 8-4-205, 8-4-  
4 210, 8-4-212 – 8-4-214, and 8-4-218 – 8-4-229 if they are not in conflict  
5 with the provisions set forth in this subchapter.

6  
7 SECTION 319. Arkansas Code § 8-7-214(a)(1), concerning an emergency  
8 order for an imminent hazard by the Director of the Arkansas Department of  
9 Environmental Quality, is amended to read as follows:

10 (a)(1) Notwithstanding any other provisions of this subchapter, the  
11 Director of the ~~Arkansas Department~~ Division of Environmental Quality, upon  
12 finding that the storage, transportation, treatment, or disposal of any waste  
13 may present an imminent and substantial hazard to the health of persons or to  
14 the environment and that an emergency exists requiring immediate action to  
15 protect the public health and welfare, he or she may, without notice or  
16 hearing, issue an order reciting the existence of such an imminent hazard and  
17 emergency and requiring that such action be taken as he or she determines to  
18 be necessary to protect the health of such persons or the environment and to  
19 meet the emergency.

20  
21 SECTION 320. Arkansas Code § 8-7-215(a), concerning requirements for a  
22 permit regarding a hazardous waste treatment or disposal facility or site, is  
23 amended to read as follows:

24 (a) No person shall construct, substantially alter, or operate any  
25 hazardous waste treatment or disposal facility or site, nor shall any person  
26 store, treat, or dispose of any hazardous waste without first obtaining a  
27 permit from the ~~Arkansas Department~~ Division of Environmental Quality for the  
28 facility, site, or activity.

29  
30 SECTION 321. Arkansas Code § 8-7-216(a) and (b), concerning permits,  
31 issuance, and interim operations regarding the Arkansas Department of  
32 Environmental Quality, are amended to read as follows:

33 (a) A permit shall be issued under such terms and conditions as the  
34 ~~Arkansas Department~~ Division of Environmental Quality may prescribe under  
35 this subchapter and under the terms and conditions the Arkansas Department of  
36 Transportation may prescribe for the transportation of hazardous waste.

1           ~~(b) A facility required to have a permit under this subchapter or~~  
2 ~~which is operating under the terms of a permit issued under the Arkansas~~  
3 ~~Water and Air Pollution Control Act, § 8-4-101 et seq., or the Arkansas Solid~~  
4 ~~Waste Management Act, § 8-6-201 et seq., as of March 14, 1979, may continue~~  
5 ~~in operation until such time as a permit is issued under this subchapter by~~  
6 ~~the Arkansas Department of Environmental Quality, provided the owner or~~  
7 ~~operator of such facility has made application on forms provided by the~~  
8 ~~Arkansas Department of Environmental Quality for such permit by September 14,~~  
9 ~~1979.~~

10  
11           SECTION 322. Arkansas Code § 8-7-216(c)(1), concerning permits,  
12 issuance, and interim operations regarding the Arkansas Department of  
13 Environmental Quality, is amended to read as follows:

14           (c)(1) A facility required to have a permit under this subchapter due  
15 to statutory or regulatory changes which occur after March 14, 1979, may  
16 continue in operation until such time as a permit is issued under this  
17 subchapter, provided that the owner or operator notifies the ~~Arkansas~~  
18 ~~Department~~ Division of Environmental Quality of newly regulated activities at  
19 the facility within ninety (90) days of the effective date of each statutory  
20 or regulatory change and makes initial permit application within one hundred  
21 eighty (180) days of the effective date of such changes on forms provided by  
22 the ~~Arkansas Department~~ Division of Environmental Quality.

23  
24           SECTION 323. Arkansas Code § 8-7-217 is amended to read as follows:

25           8-7-217. Permits – Notice of hearing.

26           No permit shall be issued by the ~~Arkansas Department~~ Division of  
27 Environmental Quality or the Arkansas Pollution Control and Ecology  
28 Commission for any commercial hazardous waste treatment, storage, or disposal  
29 facility unless thirty (30) days' advance notice of a hearing has been placed  
30 in the largest newspaper published in the county in which a commercial  
31 hazardous waste treatment, storage, or disposal facility or facilities are  
32 located or proposed to be located, as well as published in the largest  
33 newspaper published in the adjoining counties. If there is no newspaper  
34 published in any of the counties so affected, the notice shall be published  
35 in the newspaper having the largest circulation in the county.

36

1 SECTION 324. Arkansas Code § 8-7-218 is amended to read as follows:

2 8-7-218. Permits – Compliance with subchapter, state and federal  
3 standards, regulations, etc.

4 (a) No permits shall be issued by the ~~Arkansas Department~~ Division of  
5 Environmental Quality for any facility unless the ~~department~~ division, after  
6 opportunity for public comment, has determined that the facility has been  
7 designed and will be operated in such manner that any emission from the  
8 facility will comply with the provisions of this subchapter and all  
9 applicable state and federal standards and regulations concerning air and  
10 water quality and that the transfer, handling, and storage of materials  
11 within the facility will not cause conditions which would violate state and  
12 federal standards concerning worker safety or create unreasonable hazards to  
13 the environment or to the health and welfare of the people living and working  
14 in or near the facility.

15 (b)(1) No permit shall be issued by the ~~department~~ division for any  
16 commercial disposal or storage facility off the site where the hazardous  
17 waste is generated until the ~~department~~ division has adopted rules,  
18 regulations, standards, and procedures pursuant to § 8-7-209.

19 (2) The rules, regulations, standards, procedures, or other  
20 requirements adopted and imposed by the ~~department~~ division shall not be less  
21 stringent than the regulations promulgated or revised by the United States  
22 Environmental Protection Agency pursuant to the Resource Conservation and  
23 Recovery Act of 1976, 42 U.S.C. § 6901 et seq.

24 (c) No permit shall be issued for hazardous waste treatment, storage,  
25 or disposal facilities except under the terms of regulations of the  
26 ~~department~~ division which conform to the provisions of § 3005 of the Resource  
27 Conservation and Recovery Act of 1976, 42 U.S.C. § 6925.

28  
29 SECTION 325. Arkansas Code § 8-7-219 is amended to read as follows:

30 8-7-219. Permits – Commercial facilities – Terms and conditions.

31 No permit shall be issued for any commercial hazardous waste treatment,  
32 storage, or disposal facility unless that facility meets such terms and  
33 conditions as the ~~Arkansas Department~~ Division of Environmental Quality may  
34 direct, including, but not limited to:

35 (1) Evidence of liability insurance in such amount as the  
36 ~~department~~ division may determine to be necessary for the protection of the

1 public health and safety and the protection of the environment;

2 (2) Evidence of financial responsibility in such form and amount  
3 as the ~~department~~ division may determine to be necessary to ensure that, upon  
4 abandonment, cessation, or interruption of the operation of the facility, all  
5 appropriate measures are taken to prevent present and future damage to the  
6 public health and safety and to the environment;

7 (3)(A) Evidence that the personnel employed at the hazardous  
8 waste treatment or disposal facility meet such qualifications as to education  
9 and training as the ~~department~~ division may determine to be necessary to  
10 assure the safe and adequate operation of the facility.

11 (B) Persons charged with the direct supervision of the  
12 operation of any facility must be certified by the ~~department~~ division as  
13 having such qualifications after a review of the types, properties, and  
14 volume of hazardous waste to be treated or disposed of at the facility.

15 (C) The ~~department~~ division may require the  
16 recertification of supervisory personnel when there is any significant change  
17 in the types or properties of hazardous waste being treated or disposed of in  
18 any facility;

19 (4) Evidence of an appropriate preventive maintenance program,  
20 spill prevention plan, safety procedures, and contingency plans which have  
21 been developed in consultation with the fire department having jurisdiction  
22 and by the mayor or city manager of the municipality or by the county judge  
23 of the county in which the facility is to be located;

24 (5) Evidence that the location of the facility is consistent  
25 with the siting criteria established by the ~~department~~ division as provided  
26 in § 8-7-209(a)(3). The provisions of this subdivision (5) shall not apply to  
27 a treatment facility which began operation prior to the date of enactment of  
28 this act and which has an existing operating permit from the ~~department~~  
29 Arkansas Department of Environmental Quality, now the Division of  
30 Environmental Quality, or to any subsequent modifications to such treatment  
31 facility, provided that the owner of the treatment facility can demonstrate  
32 that the modifications do not materially increase the degree of hazards  
33 associated with the treatment facility; and

34 (6) Evidence of such forms of assurance, including full fee  
35 ownership of lands, and all mineral rights thereto, to ensure that the owner  
36 of any hazardous waste landfill has the legal authority to commit the

1 hazardous waste landfill to perpetual security.

2  
3 SECTION 326. Arkansas Code § 8-7-220(b), concerning the Arkansas  
4 Department of Environmental Quality's ability to grant permits, the permit's  
5 duration, and the renewal of permits, is amended to read as follows:

6 (b) Permits shall be subject to renewal by the ~~Arkansas Department~~  
7 Division of Environmental Quality upon a showing that the facility has been  
8 operated in accordance with the terms of the permit, the rules and  
9 regulations applicable to such facility, and in compliance with all other  
10 provisions of this subchapter.

11  
12 SECTION 327. Arkansas Code § 8-7-221 is amended to read as follows:

13 8-7-221. Permits – Revocation.

14 Any permit issued under §§ 8-7-215 – 8-7-220 shall be subject to  
15 revocation for failure of the permittee to comply with the terms and  
16 conditions of the permit, the rules and regulations of the ~~Arkansas~~  
17 ~~Department~~ Division of Environmental Quality applicable thereto, or the  
18 provisions of this subchapter.

19  
20 SECTION 328. Arkansas Code § 8-7-222 is amended to read as follows:

21 8-7-222. Permits – Hearing upon denial, revocation, or modification.

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

28  
29 SECTION 329. Arkansas Code § 8-7-223 is amended to read as follows:

30 8-7-223. Location of landfill.

31 No hazardous waste landfill disposal facility off the site of  
32 generation shall be located within one-half ( $\frac{1}{2}$ ) mile of any occupied dwelling  
33 unless the applicant shall affirmatively demonstrate and the ~~Arkansas~~  
34 ~~Department~~ Division of Environmental Quality shall specifically find that,  
35 because of the nature and amounts of the materials to be placed in such  
36 hazardous waste landfill disposal facility, a lesser distance will provide

1 adequate margins of safety even under abnormal operating conditions.

2  
3 SECTION 330. Arkansas Code § 8-7-224(a), concerning the rules for  
4 transporting hazardous waste, is amended to read as follows:

5 (a)(1) Following notice and public hearing, the Arkansas Department of  
6 Transportation, in consultation with the ~~Arkansas Department~~ Division of  
7 Environmental Quality, shall issue rules and regulations for the  
8 transportation of hazardous waste.

9 (2) The rules and regulations shall be consistent with  
10 applicable rules and regulations issued by the United States Department of  
11 Transportation and with any rules, regulations, and standards issued by the  
12 ~~Arkansas Department~~ Division of Environmental Quality under this subchapter.  
13

14 SECTION 331. Arkansas Code § 8-7-225 is amended to read as follows:

15 8-7-225. Records and examinations.

16 (a) The owner or operator of any hazardous waste management facility  
17 or site shall notify the ~~Arkansas Department~~ Division of Environmental  
18 Quality as to hazardous waste management activities in accordance with the  
19 requirements of this subchapter and regulations, permits, and orders issued  
20 under this subchapter, and shall establish and maintain such records, make  
21 such reports, install, use, and maintain such monitoring equipment or  
22 methods, take such samples, perform such tests, and provide such other  
23 information to the ~~department~~ division as the Director of the ~~Arkansas~~  
24 ~~Department~~ Division of Environmental Quality may reasonably require.

25 (b) The ~~department~~ division or any authorized employee or agent  
26 thereof may examine and copy any books, papers, records, or memoranda  
27 pertaining to the operation of the facility or site.

28 (c) The ~~department~~ division or any authorized employee or agent  
29 thereof may enter upon any public or private property for the purpose of  
30 obtaining information or conducting surveys or investigations necessary or  
31 appropriate for the purposes of this subchapter.

32 (d)(1)(A) Any records, reports, or information obtained under this  
33 subchapter and any permits, permit applications, and related documentation  
34 shall be available to the public for inspection and copying.

35 (B) Upon a showing satisfactory to the director that the  
36 records, reports, permits, documentation, information, or any part thereof

1 would, if made public, divulge methods or processes entitled to protection as  
2 trade secrets, the director shall consider, treat, and protect the records,  
3 reports, or information as confidential.

4 (2)(A) As necessary to carry out the provisions of this  
5 subchapter, information afforded confidential treatment may be transmitted  
6 under a continuing claim of confidentiality to other officers or employees of  
7 the state or of the United States if the owner or operator of the facility to  
8 which the information pertains is informed of the transmittal and if the  
9 information has been acquired by the ~~department~~ division under the provisions  
10 of this subchapter.

11 (B) The provisions of subdivision (d)(2)(A) of this  
12 section shall not be construed to limit the ~~department's~~ division's authority  
13 to release confidential information during emergency situations.

14 (3) Any violation of this subsection shall be unlawful and  
15 constitute a misdemeanor.

16  
17 SECTION 332. Arkansas Code § 8-7-226 is amended to read as follows:

18 8-7-226. Fees – Fund established.

19 (a) The Arkansas Pollution Control and Ecology Commission shall have  
20 authority to establish by regulation a schedule of fees to recover the costs  
21 of processing permit applications and permit renewal proceedings, on-site  
22 inspections and monitoring, the certification of personnel to operate  
23 hazardous waste treatment, storage, or disposal facilities, and other  
24 activities of ~~Arkansas Department~~ Division of Environmental Quality personnel  
25 which are reasonably necessary to assure that generators and transporters of  
26 hazardous waste and hazardous waste management facilities are complying with  
27 the provisions of this subchapter and which reasonably should be borne by the  
28 transporter, generator, or owner or operator of the hazardous waste  
29 management facility.

30 (b) All fees collected pursuant to this section shall be dedicated to  
31 enabling the ~~department~~ division to receive authorization to administer a  
32 hazardous waste management program in Arkansas pursuant to the Resource  
33 Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., as amended  
34 by the Hazardous and Solid Waste Amendments of 1984.

35 (c) The Hazardous Waste Permit Fund is established on the books of the  
36 Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the

1 State. All fees collected under the provisions of this section shall be  
2 deposited into this fund.

3 (d) The commission is hereby authorized to promulgate such rules and  
4 regulations as are necessary to administer the fees, rates, tolls, or charges  
5 for services established by this section and is directed to prescribe such  
6 fees, rates, tolls, or charges for the services delivered by the ~~department~~  
7 division or its successor in such manner as may be necessary to support the  
8 programs of the ~~department~~ division as directed by the Governor and the  
9 General Assembly.

10  
11 SECTION 333. Arkansas Code § 8-7-227(a)(3), concerning corrective  
12 action at permitted facilities and interim status facilities, is amended to  
13 read as follows:

14 (3) The corrective action component of the permit shall also  
15 require that corrective action be taken beyond the hazardous waste treatment,  
16 storage, or disposal facility boundary when necessary to protect human health  
17 and the environment unless the owner or operator of the hazardous waste  
18 treatment, storage, or disposal facility concerned demonstrates to the  
19 satisfaction of the Director of the ~~Arkansas Department~~ Division of  
20 Environmental Quality that, despite the owner's or operator's best efforts,  
21 the owner or operator was unable to obtain the necessary permission to  
22 undertake the action.

23  
24 SECTION 334. Arkansas Code § 8-7-302(5), concerning legislative  
25 findings concerning the disposal of hazardous waste, is amended to read as  
26 follows:

27 (5) The Arkansas Hazardous Waste Management Act of 1979, § 8-7-  
28 201 et seq., authorizes the ~~Arkansas Department~~ Division of Environmental  
29 Quality to encourage the development of interstate agreements for the  
30 management of hazardous waste and to enter into such interstate agreements,  
31 with the concurrence of the Governor.

32  
33 SECTION 335. Arkansas Code § 8-7-304(2) and (3), concerning the  
34 definitions of "department" and "director" under the Arkansas Resource  
35 Reclamation Act of 1979, are repealed.

36 ~~(2) "Department" means the Arkansas Department of Environmental~~



1 Quality;

2 ~~(3) "Director" means the Director of the Arkansas Department of~~  
3 ~~Environmental Quality;~~

4  
5 SECTION 336. The introductory language of Arkansas Code § 8-7-  
6 304(7)(A), concerning the definition of "hazardous waste" under the Arkansas  
7 Resource Reclamation Act of 1979, is amended to read as follows:

8 (7)(A) "Hazardous waste" means any waste or combination of  
9 wastes of a solid, liquid, contained gaseous, or semisolid form which,  
10 because of its quantity, concentration, or physical, chemical, or infectious  
11 characteristics may, in the judgment of the ~~department~~ Division of  
12 Environmental Quality;

13  
14 SECTION 337. Arkansas Code § 8-7-307(a)(2) and (3), concerning  
15 unlawful actions, acts, and omissions of third parties under the Arkansas  
16 Resource Reclamation Act of 1979, are amended to read as follows:

17 (2) Transport hazardous waste into or out of the state, except  
18 as provided by regulations established by the ~~Arkansas Department~~ Division of  
19 Environmental Quality pursuant to the provisions of this subchapter; or

20 (3) Dispose of hazardous waste in the state except as provided  
21 by regulations established by the ~~department~~ division pursuant to this  
22 subchapter.

23  
24 SECTION 338. The introductory language of Arkansas Code § 8-7-308,  
25 concerning the powers and duties of the Arkansas Department of Environmental  
26 Quality, is amended to read as follows:

27 The ~~Arkansas Department~~ Division of Environmental Quality shall have  
28 the following powers and duties:

29  
30 SECTION 339. Arkansas Code § 8-7-308(4) and (5), concerning the powers  
31 and duties of the Arkansas Department of Environmental Quality, are amended  
32 to read as follows:

33 (4) To prohibit, by regulation or by condition of permit, the  
34 disposal of any hazardous waste within the state unless the owner or  
35 custodian of the hazardous waste can demonstrate to the reasonable  
36 satisfaction of the Director of the ~~Arkansas Department~~ Division of

1 Environmental Quality that it is technically or economically infeasible for  
2 the hazardous waste to be treated;

3 (5) To issue, continue in effect, revoke, modify, or deny, under  
4 such terms as the ~~department~~ division or the General Assembly may prescribe,  
5 permits for the establishment, construction, operation, or maintenance of  
6 hazardous waste treatment or disposal facilities;

7  
8 SECTION 340. Arkansas Code § 8-7-502(b) and (c), concerning the  
9 legislative intent under the Remedial Action Trust Fund Act, are amended to  
10 read as follows:

11 (b) The purpose of this subchapter is to encourage privately funded  
12 remedial action and to clarify that persons who have undertaken remedial  
13 action at a hazardous substance site in response to an action initiated by  
14 the ~~Arkansas Department~~ Division of Environmental Quality pursuant to § 8-7-  
15 508 may obtain contribution from any other person who is liable for  
16 remediation of the hazardous substance site.

17 (c) A further purpose of this subchapter is to clarify the General  
18 Assembly's intent to provide the ~~department~~ division with the necessary funds  
19 for remedial action at a hazardous substance site, recognizing that both  
20 public and private funds must be expended to implement remedial action at the  
21 hazardous substance sites which exist in this state. Costs and expenses for  
22 remedial action, whether expended by the ~~department~~ division or by any person  
23 liable for the hazardous substance site, are legal damages to persons liable  
24 to the state and to persons liable to any other person for contribution,  
25 whether the liability arises by voluntary compliance with this subchapter  
26 pursuant to an order from or settlement with the ~~department~~ division, or by  
27 suit for injunctive relief, declaratory judgment, contribution, damages, or  
28 restitution, and whether the suit is brought by the state or by any party  
29 authorized to bring a suit for relief under this subchapter.

30  
31 SECTION 341. Arkansas Code § 8-7-503(2) and (3), concerning the  
32 definitions of "department" and "director" under the Remedial Action Trust  
33 Fund Act, are repealed

34 (2) ~~"Department" means the Arkansas Department of Environmental~~  
35 ~~Quality;~~

36 (3) ~~"Director" means the Director of the Arkansas Department of~~

1 ~~Environmental Quality,~~

2  
3 SECTION 342. Arkansas Code § 8-7-504(b)(1), concerning the penalties  
4 for unlawful acts under the Remedial Action Trust Fund Act, is amended to  
5 read as follows:

6 (1) A civil penalty in such amount as the Director of the  
7 ~~Arkansas Department~~ Division of Environmental Quality shall find appropriate,  
8 not to exceed twenty-five thousand dollars (\$25,000) per day of the  
9 violation;

10  
11 SECTION 343. Arkansas Code § 8-7-505(3), concerning unlawful acts  
12 under the Remedial Action Trust Fund Act, is amended to read as follows:

13 (3) To violate any order issued by the ~~Arkansas Department~~  
14 Division of Environmental Quality under this subchapter or any provision of  
15 such an order.

16  
17 SECTION 344. Arkansas Code § 8-7-508(a), concerning remedial and  
18 removal authority of the Arkansas Department of Environmental Quality, is  
19 amended to read as follows:

20 (a)(1) Upon finding that a hazardous substance site exists or may  
21 exist, the ~~Arkansas Department~~ Division of Environmental Quality, upon  
22 reasonable notice and after opportunity for hearing, may issue an order to  
23 any person liable for the site under § 8-7-512 if that person has caused or  
24 contributed to the release or threatened release of hazardous substances at  
25 the hazardous substance site. This order shall require that such remedial  
26 actions be taken as are necessary to investigate, control, prevent, abate,  
27 treat, or contain any releases or threatened releases of hazardous substances  
28 from the hazardous substance site.

29 (2) The fact that such a hazardous substance site is or is not  
30 listed by the Arkansas Pollution Control and Ecology Commission pursuant to §  
31 8-7-509(f) shall in no manner limit the authority of the ~~department~~ division  
32 under this subchapter.

33  
34 SECTION 345. Arkansas Code § 8-7-508(b), concerning remedial and  
35 removal authority of the Arkansas Department of Environmental Quality, is  
36 amended to read as follows:

1           (b) The Director of the ~~Arkansas Department~~ Division of Environmental  
2 Quality or any employee or authorized agent of the ~~department~~ division may  
3 enter upon any private or public property for the purpose of collecting  
4 information under this subchapter and for initiating and implementing  
5 remedial actions.

6  
7           SECTION 346. Arkansas Code § 8-7-508(d), concerning remedial and  
8 removal authority of the Arkansas Department of Environmental Quality, is  
9 amended to read as follows:

10           (d) In taking removal action or remedial actions pursuant to this  
11 subchapter, the ~~department~~ division or any contractor of the ~~department~~  
12 division under this section shall not be required to obtain any state or  
13 local permit for the portion of any removal action or remedial action  
14 conducted pursuant to this subchapter entirely on site when the removal  
15 action or remedial action is otherwise carried out in compliance with the  
16 regulations of the ~~department~~ division.

17  
18           SECTION 347. Arkansas Code § 8-7-508(f), concerning remedial and  
19 removal authority of the Arkansas Department of Environmental Quality, is  
20 amended to read as follows:

21           (f) Whenever the director has reason to believe that a release or  
22 threatened release of hazardous substances may present an imminent and  
23 substantial endangerment to the public health, safety, or welfare or to the  
24 environment, the director and the employees and the authorized  
25 representatives of the ~~department~~ division shall have the right to enter upon  
26 any affected private or public property for the purpose of collecting  
27 information and for initiating and implementing appropriate removal or  
28 remedial actions.

29  
30           SECTION 348. Arkansas Code § 8-7-509(b), concerning the Hazardous  
31 Substance Remedial Action Trust Fund, is amended to read as follows:

32           (b) The Hazardous Substance Remedial Action Trust Fund will be  
33 administered by the Director of the ~~Arkansas Department~~ Division of  
34 Environmental Quality, who shall authorize expenditures from the Hazardous  
35 Substance Remedial Action Trust Fund.

36

1 SECTION 349. Arkansas Code § 8-7-509(d)(3)(A), concerning the  
2 Hazardous Substance Remedial Action Trust Fund, is amended to read as  
3 follows:

4 (A) For the costs and expenses reasonably necessary for  
5 the administration of this subchapter by the ~~Arkansas Department~~ Division of  
6 Environmental Quality;

7  
8 SECTION 350. Arkansas Code § 8-7-509(e)(2), concerning the Hazardous  
9 Substance Remedial Action Trust Fund, is amended to read as follows:

10 (2) Reimbursement of all costs incurred by the ~~department~~  
11 division in taking removal actions in connection with a release or threatened  
12 release.

13  
14 SECTION 351. Arkansas Code § 8-7-509(f)(1), concerning the Hazardous  
15 Substance Remedial Action Trust Fund, is amended to read as follows:

16 (f)(1) No expenditures from the Hazardous Substance Remedial Action  
17 Trust Fund, as authorized by subdivisions (d)(3)(B) and (C) of this section,  
18 shall be made prior to the approval by the Arkansas Pollution Control and  
19 Ecology Commission of a prioritized listing of hazardous substance sites at  
20 which remedial actions are authorized through the use of Hazardous Substance  
21 Remedial Action Trust Fund moneys. This listing shall be revised annually by  
22 the ~~department~~ division and submitted to the commission for approval after  
23 public notice and opportunity for hearing.

24  
25 SECTION 352. Arkansas Code § 8-7-510 is amended to read as follows:

26 8-7-510. Federal actions or compensation not to be duplicated.

27 No actions taken pursuant to this subchapter by the ~~Arkansas Department~~  
28 Division of Environmental Quality shall duplicate federal actions, and no  
29 claims for the costs of response or other claims compensable under the  
30 Comprehensive Environmental Response, Compensation, and Liability Act of  
31 1980, Pub. L. No. 96-510, shall be compensable under this subchapter.

32  
33 SECTION 353. Arkansas Code § 8-7-511(a) and (b), concerning the  
34 furnishing of information to the Arkansas Department of Environmental  
35 Quality, are amended to read as follows:

36 (a) For purposes of assisting in determining the need for remedial

1 action in connection with a release or threat of release of hazardous  
2 substances under this subchapter or for enforcing the provisions of this  
3 subchapter, any person who stores, treats, or disposes of hazardous  
4 substances, or, if necessary to ascertain facts not available at the site or  
5 facility where the hazardous substances are stored, treated, or disposed of,  
6 any person who generates, transports, otherwise handles, or has handled  
7 hazardous substances shall, upon request of any officer or employee of the  
8 ~~Arkansas Department~~ Division of Environmental Quality, furnish information  
9 relating to the hazardous substance and permit the person at all reasonable  
10 times to have access to and copy all records relating to the hazardous  
11 substances and to inspect and obtain samples of any such hazardous substances  
12 or other materials.

13 (b) However, any information which would constitute a trade secret  
14 under § 4-75-601 et seq., obtained by the ~~department~~ Department of Energy and  
15 Environment, the Secretary of the Department of Energy and Environment, the  
16 division, or its employees in the administration of this subchapter, except  
17 emission data, shall be kept confidential.

18  
19 SECTION 354. Arkansas Code § 8-7-512(b)(1), concerning the liability  
20 for cost and immunity from liability, is amended to read as follows:

21 (b)(1) No person shall be liable under this subchapter for damages as  
22 a result of actions taken or omitted in the course of rendering care,  
23 assistance, or advice at the direction of the Department of Energy and  
24 Environment, the Secretary of the Department of Energy and Environment, or  
25 the ~~Arkansas Department~~ Division of Environmental Quality, with respect to an  
26 incident creating a danger to public health or welfare or the environment as  
27 a result of any release of a hazardous substance or the threat of a release  
28 of a hazardous substance.

29  
30 SECTION 355. Arkansas Code § 8-7-512(c)(1), concerning the liability  
31 for cost and immunity from liability, is amended to read as follows:

32 (c)(1) A person taking remedial action or removal action under this  
33 subchapter as a contractor for the department or division shall not be liable  
34 under this subchapter or under any other state law to any person for  
35 injuries, costs, damages, expenses, or other liability, including, but not  
36 limited to, claims for indemnification or contribution and claims by third

1 parties for death, personal injury, illness, loss of or damage to property,  
2 or economic loss resulting from a release or threatened release of hazardous  
3 substances.

4  
5 SECTION 356. Arkansas Code § 8-7-514(a) and (b), concerning recovery  
6 of expenditures from the Hazardous Substance Remedial Action Trust Fund, are  
7 amended to read as follows:

8 (a) After an expenditure from the Hazardous Substance Remedial Action  
9 Trust Fund for a removal action or remedial action, the ~~Arkansas Department~~  
10 Division of Environmental Quality shall institute action to recover the  
11 expenditure from the person or persons liable for causing the release of the  
12 hazardous substance, including taking any appropriate legal action.

13 (b) Making use of any and all appropriate existing state legal  
14 remedies, the ~~department~~ division or the Attorney General shall act to  
15 recover the amount expended by the state for any and all remedial action or  
16 removal actions from any and all parties identified as responsible parties  
17 for each hazardous substance.

18  
19 SECTION 357. Arkansas Code § 8-7-516(b), concerning liens for  
20 expenditures and the value of improvements, is amended to read as follows:

21 (b) The lien shall be effective upon the filing by the Director of the  
22 ~~Arkansas Department~~ Division of Environmental Quality of a notice of lien  
23 with the circuit clerk in the county in which the real property is located.

24  
25 SECTION 358. Arkansas Code § 8-7-516(d), concerning liens for  
26 expenditures and the value of improvements, is amended to read as follows:

27 (d) The notice of lien shall be filed within thirty (30) days of the  
28 date of the last act performed on the real property by the ~~Arkansas~~  
29 ~~Department~~ Division of Environmental Quality or its agent under this  
30 subchapter.

31  
32 SECTION 359. Arkansas Code § 8-7-517 is amended to read as follows:

33 8-7-517. Punitive damages.

34 If any person who is liable for a release or threat of release of a  
35 hazardous substance fails without sufficient cause to properly provide  
36 remedial action or removal action upon order of the ~~Arkansas Department~~

1 Division of Environmental Quality, the person may be liable to the state for  
2 punitive damages in an amount equal to three (3) times the amount of any  
3 costs incurred by the state as a result of the failure to take proper action.  
4

5 SECTION 360. The introductory language of Arkansas Code § 8-7-518(a),  
6 concerning fees on the generation of hazardous waste, is amended to read as  
7 follows:

8 (a) On or before April 1 of each year, the following persons shall  
9 report the total amount of such hazardous waste generated or accepted to the  
10 Director of the ~~Arkansas Department~~ Division of Environmental Quality, except  
11 as provided in this section, on forms prescribed by the ~~Arkansas Department~~  
12 Division of Environmental Quality:  
13

14 SECTION 361. The introductory language of Arkansas Code § 8-7-  
15 518(b)(1)(A), concerning fees on the generation of hazardous waste, is  
16 amended to read as follows:

17 (b)(1)(A) Except as provided in this section, there is assessed a fee  
18 to be collected by the ~~department~~ division upon every person who generated  
19 hazardous waste in Arkansas or who accepted hazardous waste generated outside  
20 of the state which were subsequently received for treatment, storage, or  
21 disposal in Arkansas based upon the combined total of such hazardous waste as  
22 is required to be reported pursuant to subsection (a) of this section.  
23

24 SECTION 362. Arkansas Code § 8-7-518(b)(2)(C) and (D), concerning fees  
25 on the generation of hazardous waste, are amended to read as follows:

26 (C) The ~~department~~ division shall calculate the amount of  
27 fee refund due and provide the applicant with a copy of the calculation.

28 (D) The ~~department~~ division shall promptly pay any refund  
29 due from the Hazardous Substance Remedial Action Trust Fund.  
30

31 SECTION 363. Arkansas Code § 8-7-518(c)-(e), concerning fees on the  
32 generation of hazardous waste, are amended to read as follows:

33 (c) On or before July 1 of each year, each person subject to  
34 subsection (a) of this section shall pay to the ~~department~~ division the fee  
35 required by subsection (b) of this section.

36 (d) To the extent practicable, the ~~department~~ division shall



1 coordinate the reporting requirements of this section with the reporting  
2 requirements of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-  
3 201 et seq., and the regulations adopted under the Arkansas Hazardous Waste  
4 Management Act of 1979, § 8-7-201 et seq. The content of the reporting shall  
5 be consistent with federal reporting requirements pursuant to the Resource  
6 Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., in all  
7 respects with the exception of frequency.

8 (e) The ~~department~~ division shall prepare annually a statement of all  
9 revenues collected by the fees under this section, as well as all other  
10 revenues to the fund, and all expenditures from the fund and obligations of  
11 the fund and the current balance in the fund.

12  
13 SECTION 364. Arkansas Code § 8-7-519, is amended to read as follows:  
14 8-7-519. Appeals.

15 An appeal may be taken from any final order of the ~~Arkansas Department~~  
16 Division of Environmental Quality under this subchapter as provided in §§ 8-  
17 4-202, 8-4-210, 8-4-212 – 8-4-214, 8-4-218, 8-4-219, and 8-4-221 – 8-4-229  
18 and in accordance with regulations promulgated by the Arkansas Pollution  
19 Control and Ecology Commission under this subchapter.

20  
21 SECTION 365. Arkansas Code § 8-7-521(a) and (b), concerning site  
22 access for remedial or removal actions, are amended to read as follows:

23 (a) For purposes of responding to an administrative or judicial order  
24 or settlement entered pursuant to § 8-7-508, the owner or the operator of a  
25 facility that is a hazardous substance site, or any person who otherwise  
26 controls access to such a facility, shall provide access to the ~~Arkansas~~  
27 ~~Department~~ Division of Environmental Quality, any employee of the ~~department~~  
28 division, or any other person, duly designated by the Director of the  
29 ~~Arkansas Department~~ Division of Environmental Quality, who undertakes such  
30 activities as are required to carry out the terms of the order or settlement.

31 (b) Any person who impedes or interferes with a person who is entitled  
32 to site access for the purpose of conducting remedial action or removal  
33 action at a hazardous substance site pursuant to the terms of an  
34 administrative or judicial order or settlement may be assessed a civil  
35 penalty by the ~~department~~ division in an administrative proceeding or by the  
36 court in a judicial proceeding for a site access injunction of up to ten

1 thousand dollars (\$10,000) per day that site access is impeded.

2  
3 SECTION 366. Arkansas Code § 8-7-603 is amended to read as follows:

4 8-7-603. Approval and issuance of permits.

5 Neither the ~~Arkansas Department~~ Division of Environmental Quality nor  
6 any other agency or authority having the responsibility for approving and  
7 issuing permits for facilities for the disposal or storage of low-level  
8 radioactive waste in this state shall have the authority to approve or issue  
9 a permit for any facility unless the facility will fully comply with the  
10 requirements of this subchapter in all respects.

11  
12 SECTION 367. Arkansas Code § 8-7-702(1), concerning the definition of  
13 a "hazardous site" regarding federally listed hazardous sites, is amended to  
14 read as follows:

15 (1) "Hazardous site" means any geographic area located, in whole  
16 or in part, in the State of Arkansas, access to or use of which is determined  
17 by the ~~Arkansas Department~~ Division of Environmental Quality to be necessary  
18 or appropriate to implement a response ordered by the President of the United  
19 States;

20  
21 SECTION 368. Arkansas Code § 8-7-705 is amended to read as follows:

22 8-7-705. Restrictions on use of hazardous substances.

23 Construction on or at a hazardous site and the use of such hazardous  
24 site for any residential, commercial, manufacturing, industrial, or  
25 recreational purposes shall be prohibited unless and until the ~~Arkansas~~  
26 ~~Department~~ Division of Environmental Quality issues an order terminating,  
27 wholly or partially, such prohibitions. Such order shall be subject to the  
28 procedural guidelines set forth in §§ 8-4-212 – 8-4-214 and 8-4-222 – 8-4-229  
29 of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

30  
31 SECTION 369. Arkansas Code § 8-7-706 is amended to read as follows:

32 8-7-706. Ad valorem tax exemption.

33 Upon initiation of a response action at a hazardous site, such  
34 hazardous site shall be appraised at no value for purposes of any ad valorem  
35 taxes levied by any state, county, or local governmental authority unless and  
36 until the ~~Arkansas Department~~ Division of Environmental Quality issues an

1 order wholly terminating the construction and use prohibitions established by  
2 § 8-7-705. This section shall not apply to the interest in such hazardous  
3 site owned by any passive-site owner or its successors and assigns that have  
4 violated § 8-7-703(a).

5  
6 SECTION 370. Arkansas Code § 8-7-801(4), concerning the definition of  
7 "department" under the laws for regulated substance storage tanks, is  
8 repealed.

9 ~~(4) "Department" means the Arkansas Department of Environmental~~  
10 ~~Quality;~~

11  
12 SECTION 371. Arkansas Code § 8-7-801(10)(B), concerning the definition  
13 of "release" under the laws for regulated substance storage tanks, is amended  
14 to read as follows:

15 (B) "Release" does not include releases that are permitted  
16 or authorized by the ~~department~~ division or by federal law;

17  
18 SECTION 372. Arkansas Code § 8-7-802(a)(2)(B)(ii), concerning the  
19 powers and duties of the Arkansas Pollution Control and Ecology Commission,  
20 is amended to read as follows:

21 (ii) The fee shall be used by the ~~Arkansas~~  
22 ~~Department~~ Division of Environmental Quality for administrative and program  
23 costs.

24  
25 SECTION 373. Arkansas Code § 8-7-802(a)(2)(C)(ii), concerning the  
26 powers and duties of the Arkansas Pollution Control and Ecology Commission,  
27 is amended to read as follows:

28 (ii) The fee shall be used by the ~~Arkansas~~  
29 ~~Department~~ Division of Environmental Quality for administrative and program  
30 costs, and ten dollars (\$10.00) of the fee collected by the ~~Arkansas~~  
31 ~~Department~~ Division of Environmental Quality shall be remitted to the State  
32 Treasury, there to be deposited as special revenues to the credit of the  
33 ~~Department~~ Division of Arkansas State Police Fund to be used for the purposes  
34 of above-ground storage tank monitoring and regulation by the Department of  
35 Arkansas State Police.

36

1 SECTION 374. The introductory language of Arkansas Code § 8-7-802(b),  
2 concerning the powers and duties of the Arkansas Pollution Control and  
3 Ecology Commission, is amended to read as follows:

4 (b) The ~~Arkansas Department~~ Division of Environmental Quality shall  
5 have the following powers and duties:  
6

7 SECTION 375. Arkansas Code § 8-7-802(b)(3), concerning the powers and  
8 duties of the Arkansas Pollution Control and Ecology Commission, is amended  
9 to read as follows:

10 (3) To accept and administer loans and grants from the United  
11 States Government and from such other sources as may be available to the  
12 ~~Arkansas Department~~ Division of Environmental Quality for the planning,  
13 implementation, and enforcement of an underground storage tank program for  
14 release detection, prevention, corrective action, and financial  
15 responsibility;  
16

17 SECTION 376. Arkansas Code § 8-7-802(b)(5), concerning the powers and  
18 duties of the Arkansas Pollution Control and Ecology Commission, is amended  
19 to read as follows:

20 (5) To enter upon any public or private property for the purpose  
21 of obtaining information, conducting surveys or investigations, or taking  
22 corrective action, and the ~~Arkansas Department~~ Division of Environmental  
23 Quality may copy or require submission of books, papers, records, memoranda,  
24 or data pertaining to the management of underground storage tanks;  
25

26 SECTION 377. Arkansas Code § 8-7-804 is amended to read as follows:

27 8-7-804. Procedures generally.

28 The procedure of the ~~Arkansas Department~~ Division of Environmental  
29 Quality and the Arkansas Pollution Control and Ecology Commission for  
30 issuance of rules and regulations, conduct of hearings, notice, power of  
31 subpoena, review of action on permits, right of appeal, presumptions,  
32 finality of actions, and related matters shall be as provided in §§ 8-4-101 –  
33 8-4-106 and 8-4-201 – 8-4-229, including, but not limited to, §§ 8-4-205, 8-  
34 4-210, 8-4-212 – 8-4-214, and 8-4-218 – 8-4-229 to the extent they are not in  
35 conflict with the provisions of this subchapter.  
36

1 SECTION 378. Arkansas Code § 8-7-805(a), concerning the license  
2 requirement to certify the installation or testing of an underground storage  
3 tank, is amended to read as follows:

4 (a) It shall be unlawful for an individual to certify the installation  
5 or testing of an underground storage tank unless the individual has been duly  
6 licensed by the ~~Arkansas Department~~ Division of Environmental Quality.

7  
8 SECTION 379. Arkansas Code § 8-7-805(b)(1)(B), concerning the license  
9 requirement to certify the installation or testing of an underground storage  
10 tank, is amended to read as follows:

11 (B) Which provides that the ~~department~~ division is the  
12 obligee or payee of the instrument and otherwise complies with the  
13 regulations promulgated under this subchapter.

14  
15 SECTION 380. Arkansas Code § 8-7-805(d), concerning the license  
16 requirement to certify the installation or testing of an underground storage  
17 tank, is amended to read as follows:

18 (d) In the event the licensee or contracting company fails to properly  
19 install, remove, repair, close, upgrade, or test any underground storage tank  
20 pursuant to state law or regulation, the Director of the ~~Arkansas Department~~  
21 Division of Environmental Quality shall commence proceedings to collect on  
22 the surety bond, letter of credit, or cash bond on which the ~~department~~  
23 division is the obligee or payee.

24  
25 SECTION 381. Arkansas Code § 8-7-806(a)(3), concerning penalties and  
26 enforcement for regulated substance storage tanks, is amended to read as  
27 follows:

28 (3) To violate any order issued by the ~~Arkansas Department~~  
29 Division of Environmental Quality under this subchapter or any provision of  
30 any such order.

31  
32 SECTION 382. Arkansas Code § 8-7-806(d)(5), concerning penalties and  
33 enforcement for regulated substance storage tanks, is amended to read as  
34 follows:

35 (5) The administrative procedures set forth in § 8-7-804 may be  
36 used to recover all costs, expenses, and damages to the ~~department~~ division

1 and any other agency or subdivision of the state in enforcing or effectuating  
2 the provisions of this subchapter, including, but not limited to, natural  
3 resource damages.

4  
5 SECTION 383. The introductory language of Arkansas Code § 8-7-806(e),  
6 concerning penalties and enforcement for regulated substance storage tanks,  
7 is amended to read as follows:

8 (e) The ~~department~~ division is authorized to institute a civil action  
9 in any court of competent jurisdiction to accomplish any or all of the  
10 following:

11  
12 SECTION 384. Arkansas Code § 8-7-806(e)(3), concerning penalties and  
13 enforcement for regulated substance storage tanks, is amended to read as  
14 follows:

15 (3) Recover all costs, expenses, and damages to the ~~department~~  
16 division and any other agency or subdivision of the state in enforcing or  
17 effectuating the provisions of this subchapter, including, but not limited  
18 to, natural resource damages;

19  
20 SECTION 385. Arkansas Code § 8-7-807(a)-(c), concerning the  
21 responsibility and liability of an owner of a underground storage tank, are  
22 amended to read as follows:

23 (a)(1) Upon a determination that a release of a regulated substance  
24 from a storage tank has occurred, the owner or operator shall notify the  
25 ~~Arkansas Department~~ Division of Environmental Quality. The owner or operator  
26 shall immediately undertake to collect and remove the release and to restore  
27 the area affected in accordance with the requirements of this subchapter.

28 (2) However, the obligation of an owner or operator of an  
29 aboveground storage tank to notify the ~~department~~ division or undertake the  
30 other activities required in this subsection shall not exceed and will be  
31 limited to the existing requirements of any other applicable federal or state  
32 statutes or regulations.

33 (b) If the owner or operator fails to proceed as required in  
34 subsection (a) of this section, the owner and operator shall be liable to the  
35 ~~department~~ division for any costs incurred by the ~~department~~ division for  
36 undertaking corrective action or enforcement action with respect to the

1 release of a regulated substance from a storage tank.

2 (c)(1)(A) A release site property owner or adjacent property owner  
3 shall not unduly impede or interfere with the efforts of the ~~department~~  
4 division or the owner or operator to undertake investigation, site  
5 assessment, or corrective action in accordance with the requirements of this  
6 subchapter.

7 (B) The ~~department~~ division or the owner, as defined in §  
8 8-7-801, or operator shall undertake investigation, site assessment, or  
9 corrective action, as approved by the ~~department~~ division after notice to the  
10 affected parties, that minimizes to the most reasonable extent practicable  
11 any interference with the release site property owner's or adjacent property  
12 owner's use and enjoyment of the property, taking into consideration the  
13 relevant private and commercial interests and the release site property  
14 owner's or adjacent property owner's need for access.

15 (2)(A) A release site property owner or adjacent property owner  
16 that violates subdivision (c)(1) of this section is liable for any  
17 investigation, site assessment, or corrective action costs resulting from the  
18 violation.

19 (B) If the release site property owner or adjacent  
20 property owner denies access to property when the access is reasonably  
21 necessary for investigation, site assessment, or corrective action undertaken  
22 by the ~~department~~ division or by the owner or operator under a ~~department~~  
23 division directive, order, or approved corrective action plan, the ~~department~~  
24 division may order the release site property owner or adjacent property owner  
25 to undertake the portion of investigation, site assessment, or corrective  
26 action that was prohibited by the denial of access.

27 (3) This section does not impair any right of the release site  
28 property owner or adjacent property owner to seek equitable or legal  
29 remedies, including without limitation claims for trespass, compensation as  
30 the result of eminent domain, damages for temporary or permanent takings of  
31 rights in land, contribution, and any other right or remedy allowed by state  
32 or federal law or regulation.

33  
34 SECTION 385. Arkansas Code § 8-7-807(e), concerning the responsibility  
35 and liability of an owner of a underground storage tank, is amended to read  
36 as follows:

1 (e) Any costs recovered by the ~~department~~ division under this section  
2 shall be used to reimburse the Petroleum Storage Tank Trust Fund in the  
3 amount utilized by the ~~department~~ division and the balance, if any, deposited  
4 into the Regulated Substance Storage Tank Program Fund.

5  
6 SECTION 386. Arkansas Code § 8-7-808 is amended to read as follows:

7 8-7-808. Regulated Substance Storage Tank Program Fund.

8 There is hereby established on the books of the Treasurer of State, the  
9 Auditor of State, and the Chief Fiscal Officer of the State a fund to be  
10 known as the "Regulated Substance Storage Tank Program Fund". Such Regulated  
11 Substance Storage Tank Program Fund shall consist of federal funds, any  
12 necessary state matching funds as may be provided by the General Assembly,  
13 licensure fees, annual registration fees, and any moneys recovered by the  
14 ~~Arkansas Department~~ Division of Environmental Quality which are attributable  
15 to collections of civil penalties under § 8-7-806 or to costs under § 8-7-807  
16 not owed the Petroleum Storage Tank Trust Fund. All said moneys shall be  
17 deposited as special revenues to be used in the administration of this  
18 subchapter.

19  
20 SECTION 387. Arkansas Code § 8-7-809(b)(1), concerning corrective  
21 actions and orders of the Director of the Arkansas Department of  
22 Environmental Quality, is amended to read as follows:

23 (b)(1) Notwithstanding any other provisions of this subchapter, the  
24 Director of the ~~Arkansas Department~~ Division of Environmental Quality, upon  
25 finding that the release may present an imminent and substantial hazard to  
26 the health of persons or to the environment and that an emergency exists  
27 requiring immediate action to protect the public health and welfare or the  
28 environment may, without notice or hearing, issue an order reciting the  
29 existence of such an imminent hazard and emergency and requiring that such  
30 action be taken as he or she determines to be necessary to protect the health  
31 of such persons or the environment and to meet the emergency.

32  
33 SECTION 388. Arkansas Code § 8-7-810(a), concerning insurance pools  
34 for owners and operators of storage tanks, is amended to read as follows:

35 (a) Owners or operators of storage tanks who are unable to demonstrate  
36 financial responsibility in the minimum amounts specified by the ~~Arkansas~~



1 ~~Department~~ Division of Environmental Quality may establish an insurance pool  
2 in order to demonstrate such financial responsibility.

3  
4 SECTION 389. Arkansas Code § 8-7-811 is amended to read as follows:

5 8-7-811. Trade secrets.

6 (a) Any records, reports, or information obtained by the Department of  
7 Energy and Environment, the Secretary of the Department of Energy and  
8 Environment, and the ~~Arkansas Department~~ Division of Environmental Quality or  
9 the department's or division's employees in the administration of this  
10 subchapter, except release data, shall be kept confidential upon a showing  
11 satisfactory to the Director of the ~~Arkansas Department~~ Division of  
12 Environmental Quality that the records, reports, or information would  
13 constitute a trade secret under § 4-75-601 et seq.

14 (b) As necessary to carry out the provisions of this subchapter,  
15 information afforded confidential treatment may be transmitted under a  
16 continuing claim of confidentiality to other officers or employees of the  
17 state or of the United States if the owner or operator of the facility to  
18 which the information pertains is informed of the transmittal and if the  
19 information has been acquired by the ~~department's~~ division's under the  
20 provisions of this subchapter.

21 (c) The provisions of this section shall not be construed to limit the  
22 ~~department~~ division's authority to release confidential information during  
23 emergency situations.

24 (d) Any violation of this section shall be unlawful and shall  
25 constitute a misdemeanor.

26  
27 SECTION 390. Arkansas Code § 8-7-812(b), concerning the conflicts  
28 between regulated substance storage tanks and the Arkansas Water and Air  
29 Pollution Control Act, is amended to read as follows:

30 (b) The provisions of this subchapter and the rules and regulations  
31 promulgated pursuant to this subchapter shall govern if they conflict with  
32 the provisions of the Arkansas Water and Air Pollution Control Act, § 8-4-101  
33 et seq., the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or the  
34 Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., or any  
35 action taken by the ~~Arkansas Department~~ Division of Environmental Quality  
36 under the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.,

1 the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or the Arkansas  
2 Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

3  
4 SECTION 391. Arkansas Code § 8-7-902(7) and (8), concerning the  
5 definition of "department" and "director" under the Petroleum Storage Tank  
6 Trust Fund Act, are repealed.

7 ~~(7) "Department" means the Arkansas Department of Environmental~~  
8 ~~Quality;~~

9 ~~(8) "Director" means the Director of the Arkansas Department of~~  
10 ~~Environmental Quality;~~

11  
12 SECTION 392. Arkansas Code § 8-7-902(15)(B), concerning the definition  
13 of "release" under the Petroleum Storage Tank Trust Fund Act, is amended to  
14 read as follows:

15 (B) "Release" does not include a release that is permitted  
16 or authorized by the ~~department~~ division or by federal law;

17  
18 SECTION 393. Arkansas Code § 8-7-903(c), concerning the rules and  
19 regulations and the powers and duties of the Director of the Department of  
20 Finance and Administration, is amended to read as follows:

21 (c) The ~~Arkansas Department~~ Division of Environmental Quality shall  
22 have the authority to enter upon the property of any owner or operator of an  
23 aboveground storage tank to obtain information, conduct surveys, or review  
24 records for the purpose of determining substantial compliance, as defined by  
25 this subchapter and regulations promulgated thereunder, with all state and  
26 federal laws and regulations relating to aboveground storage tanks prior to  
27 the director's approval of a claim for reimbursement or disbursement.

28  
29 SECTION 394. Arkansas Code § 8-7-904(e), concerning the establishment  
30 of the Advisory Committee on Petroleum Storage Tanks, is amended to read as  
31 follows:

32 (e) The ~~Arkansas Department~~ Division of Environmental Quality shall  
33 provide adequate staff to support the activities of the committee.

34  
35 SECTION 395. Arkansas Code § 8-7-904(g), concerning the establishment  
36 of the Advisory Committee on Petroleum Storage Tanks, is amended to read as

1 follows:

2 (g) The committee shall advise and make recommendations to the  
3 Director of the ~~Arkansas Department~~ Division of Environmental Quality  
4 regarding claims for payment under this subchapter.

5

6 SECTION 396. Arkansas Code § 8-7-904(h), concerning the establishment  
7 of the Advisory Committee on Petroleum Storage Tanks, is amended to read as  
8 follows:

9 (h) The committee shall advise the ~~department~~ division and the  
10 Arkansas Pollution Control and Ecology Commission regarding promulgation of  
11 rules and regulations concerning storage tanks.

12

13 SECTION 397. Arkansas Code § 8-7-905(b) and (c), concerning the  
14 establishment of the Petroleum Storage Tank Trust Fund, are amended to read  
15 as follows:

16 (b) The fund will be administered by the Director of the ~~Arkansas~~  
17 ~~Department~~ Division of Environmental Quality, who shall make disbursements  
18 from the fund as authorized by this subchapter.

19 (c) The fund shall consist of gifts, grants, donations, and such other  
20 funds as may be made available by the General Assembly, including all  
21 interest earned upon money deposited into the fund, fees assessed under this  
22 subchapter, any moneys recovered by the ~~Arkansas Department~~ Division of  
23 Environmental Quality, the proceeds of bonds issued by the Arkansas  
24 Development Finance Authority for the benefit of the fund, and any other  
25 moneys legally designated for the fund.

26

27 SECTION 398. Arkansas Code § 8-7-905(d)(4) and (5), concerning the  
28 establishment of the Petroleum Storage Tank Trust Fund, are amended to read  
29 as follows:

30 (4) To pay reasonable and necessary costs and expenses of the  
31 ~~department~~ division for taking corrective action caused by accidental  
32 releases from a storage tank of unknown ownership or when corrective action  
33 is not commenced by the owner or operator in a timely manner;

34 (5)(A) To reimburse owners and operators in the vicinity of the  
35 release for performing short-term testing or monitoring which is in addition  
36 to that required by the ~~department's~~ division's rules and regulations if the

1 ~~department~~ division has a reasonable basis for believing that the petroleum  
2 underground storage tank or tanks may be the source of the release.

3 (B) The owners and operators of petroleum underground  
4 storage tanks, including out-of-service and nonoperational petroleum  
5 underground storage tanks, not found to be the source of the release and who  
6 cooperate with the ~~department~~ division may apply to the fund for  
7 reimbursement for such testing and monitoring costs, not including lost  
8 managerial time or loss of revenues because of temporary business closure;  
9 and

10  
11 SECTION 399. Arkansas Code § 8-7-905(i)(2), concerning the  
12 establishment of the Petroleum Storage Tank Trust Fund, is amended to read as  
13 follows:

14 (2) The procedures of the ~~department~~ division and the Arkansas  
15 Pollution Control and Ecology Commission for issuance of rules and  
16 regulations, conduct of hearings, notice, power of subpoena, right of appeal,  
17 presumptions, finality of actions, and related matters shall be as provided  
18 in §§ 8-4-202, 8-4-210 – 8-4-214, and 8-4-218 – 8-4-229, and in rules and  
19 regulations applicable to administrative procedures of the ~~department~~  
20 division and the Arkansas Pollution Control and Ecology Commission to the  
21 extent they are not in conflict with the provisions of this subchapter.

22  
23 SECTION 400. Arkansas Code § 8-7-907(a)(1), concerning payments for  
24 corrective action from the Petroleum Storage Tank Trust Fund, is amended to  
25 read as follows:

26 (a)(1) No payment for corrective action shall be paid from the  
27 Petroleum Storage Tank Trust Fund until the owner or operator has expended  
28 seven thousand five hundred dollars (\$7,500) on corrective action for the  
29 occurrence, except in cases in which the Director of the ~~Arkansas Department~~  
30 Division of Environmental Quality is using emergency authority under § 8-7-  
31 905(e). It is the intent of the General Assembly that this initial level of  
32 expenditure be considered the equivalent of an insurance policy deductible.

33  
34 SECTION 401. Arkansas Code § 8-7-907(c)(2) and (3), concerning  
35 payments for corrective action from the Petroleum Storage Tank Trust Fund,  
36 are amended to read as follows:

1           (2) The corrective action expenses submitted for reimbursement  
2 consist of items and amounts that are in accord and compliant with ~~Arkansas~~  
3 ~~Department~~ Division of Environmental Quality regulations; and

4           (3) The owner or operator cooperated fully with the ~~department~~  
5 division in corrective action to address the release.

6  
7           SECTION 402. Arkansas Code § 8-7-907(e)(2)(B), concerning payments for  
8 corrective action from the Petroleum Storage Tank Trust Fund, is amended to  
9 read as follows:

10                   (B) Specific assurances must be provided that an approved  
11 corrective action plan, ~~department~~ division directive, or order is being  
12 implemented and followed to date; and

13  
14           SECTION 403. Arkansas Code § 8-7-907(f), concerning payments for  
15 corrective action from the Petroleum Storage Tank Trust Fund, is amended to  
16 read as follows:

17           (f)(1) In the event moneys are expended from the fund for corrective  
18 action and the owner or operator was not at the time of the occurrence  
19 eligible to receive reimbursement for corrective action, as defined by this  
20 subchapter and regulations promulgated under this subchapter, the ~~department~~  
21 division may recover from the owner or operator the amount of moneys expended  
22 from the fund for corrective action by filing an action in the appropriate  
23 circuit court or by using the administrative procedures set forth in § 8-7-  
24 804.

25           (2)(A) The ~~department~~ division also has a right of subrogation:

26                   (i) To any insurance policies in existence at the  
27 time of the occurrence to the extent of any rights the owner or operator of a  
28 site may have had under that policy; and

29                   (ii) Against any third party who caused or  
30 contributed to the occurrence.

31           (B) The right of subrogation shall apply to sites where  
32 corrective action is taken by:

33                   (i) Owners or operators; or

34                   (ii) The ~~department~~ division.

35           (C) As used in this subsection, "third party" does not  
36 include a former owner or operator of the site where corrective action is

1 taken.

2

3 SECTION 404. Arkansas Code § 8-7-907(g)(2), concerning payments for  
4 corrective action from the Petroleum Storage Tank Trust Fund, is amended to  
5 read as follows:

6 (2) Eligibility for reimbursement of unknown petroleum storage  
7 tanks will be conditioned on the payment of three hundred seventy-five  
8 dollars (\$375) to the ~~department~~ division.

9

10 SECTION 405. Arkansas Code § 8-7-907(h), concerning payments for  
11 corrective action from the Petroleum Storage Tank Trust Fund, is amended to  
12 read as follows:

13 (h) If the owner or operator is found to have been in noncompliance  
14 with any state and federal laws and regulations relating to storage tanks at  
15 the time of the occurrence, the ~~department~~ division may assess a penalty in  
16 accordance with its applicable policies and procedures.

17

18 SECTION 406. Arkansas Code § 8-7-907(i)(1), concerning payments for  
19 corrective action from the Petroleum Storage Tank Trust Fund, is amended to  
20 read as follows:

21 (i)(1) An owner or operator determined to be eligible for payment for  
22 corrective action for a release from a qualified storage tank or the  
23 ~~department~~ division may transfer the eligibility to a subsequent owner or  
24 operator of the qualified storage tank if the ~~department~~ division determines  
25 that the subsequent owner or operator has the financial and legal capacity to  
26 complete the corrective action and the subsequent owner or operator agrees in  
27 writing to assume responsibility for corrective action.

28

29 SECTION 407. Arkansas Code § 8-7-907(j)(2), concerning payments for  
30 corrective action from the Petroleum Storage Tank Trust Fund, is amended to  
31 read as follows:

32 (2) If an owner or operator is performing corrective action to  
33 the ~~department's~~ division's satisfaction, a lender or secured creditor is not  
34 eligible to assume responsibility for corrective action or to receive payment  
35 for corrective action.

36

1 SECTION 408. Arkansas Code § 8-7-907(k)(2)(D), concerning payments for  
2 corrective action from the Petroleum Storage Tank Trust Fund, is amended to  
3 read as follows:

4 (D) Providing for reversion of equipment to the ~~department~~  
5 division if the responsibility for the maintenance or payment for the  
6 equipment is not met.

7  
8 SECTION 409. Arkansas Code § 8-7-908(a)(1)(A), concerning third-party  
9 claims regarding the Petroleum Storage Tank Trust Fund, is amended to read as  
10 follows:

11 (A) The Director of the ~~Arkansas Department~~ Division of  
12 Environmental Quality is using his or her emergency authority under § 8-7-  
13 905(e); or

14  
15 SECTION 410. Arkansas Code § 8-7-908(d), concerning third-party claims  
16 regarding the Petroleum Storage Tank Trust Fund, is amended to read as  
17 follows:

18 (d)(1)(A) Any owner or operator against whom a third-party claim is  
19 filed in court or in the Arkansas State Claims Commission shall give written  
20 notice of the claim to the ~~Arkansas Department~~ Division of Environmental  
21 Quality no later than twenty (20) days after service of summons or receipt of  
22 notification of the claim from the Arkansas State Claims Commission.

23 (B) As a condition of eligibility, an owner or operator  
24 shall cooperate with and assist the ~~department~~ division and, if applicable,  
25 the Attorney General's office in connection with the third-party claim.

26 (C) At a minimum, the cooperation shall include active  
27 participation by the owner or operator throughout the litigation and  
28 providing assistance as required by the ~~department~~ division or the Attorney  
29 General's office during resolution of a third-party claim.

30 (D) In determining compliance with subdivisions (d)(1)(B)  
31 and (C) of this section, the director shall consider the owner's or  
32 operator's financial condition.

33 (2) Upon receipt of the notice, the ~~department~~ division shall  
34 immediately notify the Attorney General, who shall have the right to  
35 intervene in any such lawsuit or proceeding in order to protect the interests  
36 of the state in the fund.

1           (3) Payment of third-party claims from the fund may be denied  
2 for any owner or operator who fails to give the ~~department~~ division notice as  
3 required in this subsection.  
4

5           SECTION 411. Arkansas Code § 8-7-908(f), concerning third-party claims  
6 regarding the Petroleum Storage Tank Trust Fund, is amended to read as  
7 follows:

8           (f)(1) In the event moneys are expended from the fund for third-party  
9 claims and the owner or operator was not at the time of the occurrence in  
10 substantial compliance, as defined by this subchapter and regulations  
11 promulgated under this subchapter, the ~~department~~ division may recover from  
12 the owner or operator the amount of moneys expended from the fund for the  
13 third-party claim by filing an action in the appropriate circuit court or by  
14 using the administrative procedures set forth in § 8-7-804.

15           (2)(A) The ~~department~~ division also has a right of subrogation:

16                   (i) To any insurance policies in existence at the  
17 time of the occurrence to the extent of any rights the owner or operator of a  
18 site may have had under that insurance policy; and

19                   (ii) Against any third party who caused or  
20 contributed to the occurrence.

21           (B) The right of subrogation shall apply to sites where  
22 corrective action is taken by:

23                   (i) Owners or operators; or

24                   (ii) The ~~department~~ division.

25           (C) As used in this subsection, "third party" does not  
26 include a former owner or operator of the site where corrective action is  
27 taken.  
28

29           SECTION 412. Arkansas Code § 8-7-908(g)(2), concerning third-party  
30 claims regarding the Petroleum Storage Tank Trust Fund, is amended to read as  
31 follows:

32           (2) Eligibility for reimbursement of unknown petroleum storage  
33 tanks will be conditioned on the payment of three hundred seventy-five  
34 dollars (\$375) to the ~~department~~ division.  
35

36           SECTION 413. Arkansas Code § 8-7-908(h)(1), concerning third-party



1 claims regarding the Petroleum Storage Tank Trust Fund, is amended to read as  
2 follows:

3 (h)(1) An owner or operator determined to be eligible for payment for  
4 third-party claims for a release may transfer the eligibility to an owner or  
5 operator that acquires the storage tank if the ~~department~~ division determines  
6 that the subsequent owner or operator has the financial and legal capacity  
7 and has assumed in writing the responsibility for third-party liability.  
8

9 SECTION 414. Arkansas Code § 8-7-909 is amended to read as follows:  
10 8-7-909. Confidential treatment of information.

11 (a) Any records, reports, or information obtained by the ~~Arkansas~~  
12 ~~Department~~ Division of Environmental Quality or the ~~department's~~ division's  
13 employees in the administration of this subchapter, except release data,  
14 shall be kept confidential upon a showing satisfactory to the Director of the  
15 ~~Arkansas Department~~ Division of Environmental Quality that the records,  
16 reports, or information would constitute a trade secret under § 4-75-601 et  
17 seq.

18 (b) As necessary to carry out the provisions of this subchapter,  
19 information afforded confidential treatment may be transmitted under a  
20 continuing claim of confidentiality to other officers or employees of the  
21 state or of the United States if the owner or operator of the facility to  
22 which the information pertains is informed of the transmittal and if the  
23 information has been acquired by the ~~department~~ division under the provisions  
24 of this subchapter.

25 (c) The provisions of this section shall not be construed to limit the  
26 ~~department's~~ division's authority to release confidential information during  
27 emergency situations.

28 (d) Any violation of this section shall be unlawful and shall  
29 constitute a misdemeanor.  
30

31 SECTION 415. Arkansas Code § 8-7-1101(4) and (5), concerning the  
32 declaration of policy by the General Assembly for the redevelopment of  
33 abandoned industrial, commercial, or agricultural sites or abandoned  
34 residential property, are amended to read as follows:

35 (4) Incentives should be put in place to encourage prospective  
36 purchasers to voluntarily develop and implement cleanup plans of abandoned

1 sites without the need for adversarial enforcement actions by the ~~Arkansas~~  
2 ~~Department~~ Division of Environmental Quality;

3 (5) The ~~department~~ division now routinely determines, through  
4 its permitting policies, when contamination will and will not pose  
5 unacceptable risks to public health or the environment, and similar concepts  
6 are used in establishing cleanup policies for abandoned sites;

7  
8 SECTION 416. Arkansas Code § 8-7-1102(a)(1), concerning the definition  
9 of "abandoned site" under the laws about the voluntary cleanup of hazardous  
10 waste, is amended to read as follows:

11 (1) "Abandoned site" means a site on which industrial,  
12 commercial, or agricultural activity occurred and for which no responsible  
13 person can reasonably be pursued for a remedial response to clean up the site  
14 or residential property or when the ~~Arkansas Department~~ Division of  
15 Environmental Quality determines it is in the best interest of the citizens  
16 of Arkansas to promote redevelopment under this subchapter while continuing  
17 to pursue the responsible party or parties;

18  
19 SECTION 417. Arkansas Code § 8-7-1102(a)(2), concerning the definition  
20 of "implementing agreement" under the laws about the voluntary cleanup of  
21 hazardous waste, is amended to read as follows:

22 (2) "Implementing agreement" means a plan, order, memorandum of  
23 agreement, or other enforceable document issued by the ~~department~~ division  
24 under provisions of the Arkansas Hazardous Waste Management Act of 1979, § 8-  
25 7-201 et seq., the Remedial Action Trust Fund Act, § 8-7-501 et seq., or this  
26 subchapter, to implement the voluntary cleanup process described in § 8-7-  
27 1104;

28  
29 SECTION 418. The introductory language of Arkansas Code § 8-7-1103(a),  
30 concerning the authority of the Arkansas Department of Environmental Quality,  
31 is amended to read as follows:

32 (a) The ~~Arkansas Department~~ Division of Environmental Quality shall  
33 have authority regarding a voluntary response program to provide the  
34 following:

35  
36 SECTION 419. Arkansas Code § 8-7-1103(a)(6), concerning the authority

1 of the Arkansas Department of Environmental Quality, is amended to read as  
2 follows:

3 (6)(A) A requirement for certification or similar documentation  
4 from the ~~department~~ division to the person conducting the voluntary response  
5 action indicating that the response is complete.

6 (B) This certification shall document any conditions,  
7 restrictions, or limitations on the release from liability for contamination  
8 existing at the site before the ~~department~~ division and the prospective  
9 purchaser enter into an implementing agreement.

10

11 SECTION 420. Arkansas Code § 8-7-1103(b), concerning the authority of  
12 the Arkansas Department of Environmental Quality, is amended to read as  
13 follows:

14 (b) The ~~department~~ division may establish and administer a revolving  
15 loan fund to make secured and unsecured loans or grants to eligible  
16 participants for the purpose of financing the assessment, investigation, or  
17 remedial actions at abandoned industrial, commercial, or agricultural sites,  
18 or at abandoned residential property.

19

20 SECTION 421. Arkansas Code § 8-7-1104(c), concerning the voluntary  
21 cleanup process, is amended to read as follows:

22 (c) Following completion of a comprehensive site assessment, the  
23 ~~Arkansas Department~~ Division of Environmental Quality shall determine whether  
24 the site assessment adequately identifies the environmental risks posed by  
25 the abandoned site.

26

27 SECTION 422. Arkansas Code § 8-7-1104(d)(4), concerning the voluntary  
28 cleanup process, is amended to read as follows:

29 (4) The notice shall be subject to the approval of the  
30 ~~department~~ division.

31

32 SECTION 423. Arkansas Code § 8-7-1104(f)(1)(B), concerning the  
33 voluntary cleanup process, is amended to read as follows:

34 (B) A purchaser may not actually use the property in a  
35 manner which differs from the intended use identified in the implementing  
36 agreement contemplated by subsection (d) of this section, unless the

1 ~~department~~ division and purchaser agree to a modification of the implementing  
2 agreement; or

3  
4 SECTION 424. Arkansas Code § 8-7-1104(h)(1), concerning the voluntary  
5 cleanup process, is amended to read as follows:

6 (h)(1) The selection of remedial action shall be approved by the  
7 ~~department~~ division after reasonable notice and after opportunity for hearing  
8 and shall become an amendment to the implementing agreement entered into  
9 pursuant to subsection (d) of this section.

10  
11 SECTION 425. Arkansas Code § 8-7-1104(j), concerning the voluntary  
12 cleanup process, is amended to read as follows:

13 (j) A prospective purchaser of an abandoned site under this subchapter  
14 shall not be responsible for paying any fines or penalties levied against any  
15 person responsible for contamination on the abandoned site prior to the  
16 implementing agreement with the ~~department~~ division.

17  
18 SECTION 426. Arkansas Code § 8-7-1104(m), concerning the voluntary  
19 cleanup process, is amended to read as follows:

20 (m) Upon written notice to the ~~department~~ division, the implementing  
21 agreement, including all rights and cleanup liabilities entered into by the  
22 ~~department~~ division and the prospective purchaser under subsection (d) of  
23 this section, is transferable in its entirety to all subsequent owners of the  
24 property who did not, by act or omission, cause or contribute to any release  
25 or threatened release of hazardous substances on the abandoned site.

26  
27 SECTION 427. Arkansas Code § 8-7-1204(b)(4), concerning the creation  
28 of the Abandoned Pesticide Advisory Board, is amended to read as follows:

29 (4) One (1) member shall be a representative from the ~~Arkansas~~  
30 ~~Department~~ Division of Environmental Quality;

31  
32 SECTION 428. Arkansas Code § 8-7-1302 is amended to read as follows:  
33 8-7-1302. Purpose.

34 It is the purpose of this subchapter to authorize the ~~Arkansas~~  
35 ~~Department~~ Division of Environmental Quality to establish and administer a  
36 certification program to maintain a list of Phase I consultants who meet the

1 minimum qualifications for an environmental professional who undertakes a  
2 Phase I environmental site assessment, referred to as “all appropriate  
3 inquiry” under the Small Business Liability Relief and Brownfields  
4 Revitalization Act, Pub. L. No. 107-118, as it exists on January 1, 2007, or  
5 a Phase I environmental site assessment under the American Society for  
6 Testing and Materials standard E1527-05 as in effect on January 1, 2007.

7  
8 SECTION 429. Arkansas Code § 8-7-1311(a)(1), concerning fees paid to  
9 the Hazardous Waste Permit Fund of the Arkansas Pollution Control and Ecology  
10 Commission, is amended to read as follows:

11 (a)(1) Under regulations promulgated by the Arkansas Pollution Control  
12 and Ecology Commission, the ~~Arkansas Department~~ Division of Environmental  
13 Quality may assess fees to Phase I consultants who apply to be placed on the  
14 list maintained under § 8-7-1304.

15  
16 SECTION 430. The introductory language of Arkansas Code § 8-7-1402(a),  
17 concerning professional cleanup of properties contaminated through the  
18 manufacture of controlled substances, is amended to read as follows:

19 (a) The ~~Arkansas Department~~ Division of Environmental Quality shall:

20  
21 SECTION 431. Arkansas Code § 8-7-1402(a)(4)(A) and (B), concerning  
22 professional cleanup of properties contaminated through the manufacture of  
23 controlled substances, are amended to read as follows:

24 (A) On the ~~department's~~ division's website; and

25 (B) In hard copy upon request to the ~~department~~ division;

26 and

27  
28 SECTION 432. Arkansas Code § 8-7-1403(b), concerning the reporting of  
29 properties contaminated through the manufacture of controlled substances, is  
30 amended to read as follows:

31 (b)(1) If a property owner finds or becomes aware of evidence of a  
32 laboratory for the manufacture of controlled substances on his or her  
33 property, the property owner shall have the property inspected in accordance  
34 with the guidelines established by the ~~Arkansas Department~~ Division of  
35 Environmental Quality under this subchapter by a contractor certified by the  
36 ~~department~~ division under § 8-7-1402.

1 (2) If the contractor selected by the property owner under  
2 subdivision (b)(1) of this section verifies that a laboratory for the  
3 manufacture of controlled substances has been on the property, the contractor  
4 shall notify the ~~department~~ division, and the ~~department~~ division shall place  
5 the property on the contaminated properties list required under § 8-7-1404.  
6

7 SECTION 433. Arkansas Code § 8-7-1404(a), concerning the required  
8 recordkeeping by the Arkansas Department of Environmental Quality, is amended  
9 to read as follows:

10 (a) ~~By May 1, 2008, the Arkansas Department~~ The Division of  
11 Environmental Quality shall maintain records concerning properties  
12 contaminated through the manufacture of controlled substances.  
13

14 SECTION 434. The introductory language of the Arkansas Code § 8-7-  
15 1404(b), concerning the required recordkeeping by the Arkansas Department of  
16 Environmental Quality, is amended to read as follows:

17 (b) The ~~department~~ division shall:  
18

19 SECTION 435. Arkansas Code § 8-7-1404(b)(3)(B), concerning the  
20 required recordkeeping by the Arkansas Department of Environmental Quality,  
21 is amended to read as follows:

22 (B) The property has met the remediation standards  
23 developed by the ~~department~~ division;  
24

25 SECTION 436. Arkansas Code § 8-7-1404(b)(4) and (5), concerning the  
26 required recordkeeping by the Arkansas Department of Environmental Quality,  
27 are amended to read as follows:

28 (4)(A) Post the results of a cleanup on the ~~department's~~  
29 division's website for ten (10) working days after the ~~department~~ division  
30 determines that the property has been adequately remediated.

31 (B) After the ten (10) working days of posting required  
32 under subdivision (b)(4)(A) of this section, the ~~department~~ division shall  
33 remove from the ~~department's~~ division's website the formerly contaminated  
34 property and the results of the cleanup; and

35 (5) Remove a property from the list when the ~~department~~ division  
36 finds that the property has been adequately remediated.

1  
2 SECTION 437. Arkansas Code § 8-7-1404(c), concerning the required  
3 recordkeeping by the Arkansas Department of Environmental Quality, are  
4 amended to read as follows:

5 (c)(1) The ~~department~~ division shall make the list of properties  
6 contaminated through the manufacture of controlled substances available to  
7 law enforcement officials and to the public:

8 (A) On the ~~department's~~ division's website; and

9 (B) In hard copy upon request to the ~~department~~ division.

10 (2) The ~~department~~ division shall keep hard copies of the  
11 information required under this section until the ~~department~~ division has  
12 removed the property from the list of properties contaminated through the  
13 manufacture of controlled substances.

14  
15 SECTION 438. Arkansas Code § 8-7-1405(b)(3), concerning the notice of  
16 cleanup and residual contamination, is amended to read as follows:

17 (3) The ~~Arkansas Department~~ Division of Environmental Quality  
18 shall cooperate with the Arkansas Crime Information Center to create a  
19 computer link that will allow the center to transfer to the ~~department~~  
20 division information from the National Clandestine Laboratory Seizure Report  
21 required under 28 C.F.R. Part 23 that is relevant to the notice of removal  
22 required under subsection (d) of this section.

23  
24 SECTION 439. Arkansas Code § 8-7-1405(d)(7)(D)(i), concerning the  
25 notice of cleanup and residual contamination, is amended to read as follows:

26 (D)(i) It is unlawful for any unauthorized person to enter  
27 a residually contaminated property or, in the case of a space-rental mobile  
28 home or recreational vehicle park, the unit located on the property until the  
29 ~~department~~ division establishes that the portion of the property identified  
30 as residually contaminated has been properly remediated.

31  
32 SECTION 440. Arkansas Code § 8-7-1405(d)(7)(D)(ii)(a), concerning the  
33 notice of cleanup and residual contamination, is amended to read as follows:

34 (a) An employee of the ~~department~~ division;

35  
36 SECTION 441. Arkansas Code § 8-7-1405(d)(7)(E)-(G), concerning the

1 notice of cleanup and residual contamination, are amended to read as follows:

2 (E) Failure to comply with this section is a violation of  
3 the ~~department's~~ division's rules pertaining to the cleanup of laboratories  
4 for the manufacture of controlled substances;

5 (F) Disturbing the notice of removal posted on the  
6 property is a violation of the ~~department's~~ division's rules concerning the  
7 cleanup of laboratories for the manufacture of controlled substances; and

8 (G) The owner of the property is responsible for  
9 remediating the residually contaminated portion of the property in compliance  
10 with the ~~department's~~ division's rules concerning the cleanup of laboratories  
11 for the manufacture of controlled substances.

12  
13 SECTION 442. Arkansas Code § 8-7-1406 is amended to read as follows:

14 8-7-1406. Remediated property.

15 (a) After property contaminated through the manufacture of controlled  
16 substances is remediated and the property owner receives official  
17 notification from the ~~Arkansas Department~~ Division of Environmental Quality,  
18 no person, including the property owner, landlord, and real estate agent, is  
19 required to report or otherwise disclose the past contamination.

20 (b) Unless retention is mandated by federal law, the ~~department~~  
21 division shall destroy all copies of information required to be kept under  
22 this subchapter that refer to a specific property location once the property  
23 is officially removed from the contaminated properties list.

24  
25 SECTION 443. Arkansas Code § 8-9-101 is amended to read as follows:

26 8-9-101. Policy.

27 It is the policy of the State of Arkansas to encourage and promote  
28 recycling in order to conserve natural resources, conserve energy, and  
29 preserve landfill space. In furtherance of this policy, the State of Arkansas  
30 adopts as a goal in the new century the recycling of forty percent (40%) of  
31 its municipal solid waste by 2005 and forty-five percent (45%) of its  
32 municipal solid waste by 2010, as shall be determined by the ~~Arkansas~~  
33 ~~Department~~ Division of Environmental Quality by regulation.

34  
35 SECTION 444. Arkansas Code § 8-9-104(2), concerning the definition of  
36 "department" under the laws governing recycling, is repealed.



1                   ~~(2) "Department" means the Arkansas Department of Environmental~~  
2 ~~Quality;~~

3  
4           SECTION 445. Arkansas Code § 8-9-104(3)(A), concerning the definition  
5 of "materials in the recycling process" under the laws governing recycling,  
6 is amended to read as follows:

7                   (A) Those materials are processed or handled using  
8 reasonably available processing equipment and control technology, as  
9 determined by the Director of the ~~Arkansas Department~~ Division of  
10 Environmental Quality, taking cost into account; and

11  
12           SECTION 446. Arkansas Code § 8-9-202 is amended to read as follows:

13           8-9-202. Powers and duties of the ~~department~~ division.

14           The ~~Arkansas Department~~ Division of Environmental Quality shall have  
15 the power and duty to:

16                   (1) Adopt reasonable rules and regulations to effectuate the  
17 purposes of this subchapter;

18                   (2) Promote public education and public awareness of the  
19 necessity of supporting waste reduction and recyclable material recovery as  
20 an integral part of all solid waste and recyclable materials programs in the  
21 state; and

22                   (3) Provide, to the extent practicable, upon request, to state  
23 agencies, planning and technical assistance in carrying out their  
24 responsibilities under this subchapter.

25  
26           SECTION 447. The introductory language of Arkansas Code § 8-9-203(a),  
27 concerning recycling by governmental entities, is amended to read as follows:

28                   (a) Each state agency, state college or university, county, city, and  
29 public school, in cooperation with the ~~Arkansas Department~~ Division of  
30 Environmental Quality and the Compliance Advisory Panel shall:

31  
32           SECTION 448. Arkansas Code § 8-9-302(b), concerning plastic container  
33 labeling, is amended to read as follows:

34                   (b) The ~~Arkansas Department~~ Division of Environmental Quality shall  
35 maintain a list of the label codes provided pursuant to this section and  
36 shall provide a copy of that list to any person upon request.

1  
2 SECTION 449. Arkansas Code § 8-9-303(c) and (d), concerning lead-acid  
3 batteries, are amended to read as follows:

4 (c) The ~~Arkansas Department~~ Division of Environmental Quality shall  
5 produce, print, and distribute the notices required by this section to all  
6 places where lead-acid batteries are offered for sale at retail.

7 (d) In performing its duties under this section, the ~~department~~  
8 division may inspect any place, building, or premises governed by this  
9 section.

10  
11 SECTION 450. Arkansas Code § 8-9-401(b)(2), concerning title,  
12 legislative intent, and findings under the Used Tire Recycling and  
13 Accountability Act, is amended to read as follows:

14 (2) Provide accountability and sustainability for used tire  
15 programs by requiring use of the electronic uniform used tire manifest system  
16 developed by the ~~Arkansas Department~~ Division of Environmental Quality and  
17 business plans for used tire programs;

18  
19 SECTION 451. The introductory language of Arkansas Code § 8-9-402(3),  
20 concerning the definition of "electronic uniform used tire manifest system"  
21 under the Used Tire Recycling and Accountability Act, is amended to read as  
22 follows:

23 (3) "Electronic uniform used tire manifest system" means an  
24 administrative method developed by the ~~Arkansas Department~~ Division of  
25 Environmental Quality that:

26  
27 SECTION 452. Arkansas Code § 8-9-402(9), concerning the definition of  
28 "qualified entity" under the Used Tire Recycling and Accountability Act, is  
29 amended to read as follows:

30 (9) "Qualified entity" means an entity that demonstrates to the  
31 ~~department~~ division that the entity has the capability, experience, and  
32 resources to operate and administer a used tire program in compliance with  
33 this subchapter;

34  
35 SECTION 453. Arkansas Code § 8-9-402(25)(B)(ii), concerning the  
36 definition of "qualified entity" under the Used Tire Recycling and

1 Accountability Act, is amended to read as follows:

2 (ii) A location that is authorized to store tires by  
 3 the ~~department~~ division or regulations promulgated by the Arkansas Pollution  
 4 Control and Ecology Commission;

5  
 6 SECTION 454. The introductory language of Arkansas Code § 8-9-  
 7 403(a)(1), concerning requirements, prohibited activities, and operation of  
 8 waste tire sites, is amended to read as follows:

9 (a)(1) The owner or operator of any waste tire site shall provide the  
 10 ~~Arkansas Department~~ Division of Environmental Quality and the applicable  
 11 regional solid waste management district with:

12  
 13 SECTION 455. Arkansas Code § 8-9-403(a)(1)(B), concerning  
 14 requirements, prohibited activities, and operation of waste tire sites, is  
 15 amended to read as follows:

16 (B) A written plan specifying a method and time schedule,  
 17 subject to approval by the ~~department~~ division, for the removal, disposal, or  
 18 recycling of the tires.

19  
 20 SECTION 456. Arkansas Code § 8-9-403(a)(2), concerning requirements,  
 21 prohibited activities, and operation of waste tire sites, is amended to read  
 22 as follows:

23 (2) The owner or operator shall implement a written plan  
 24 approved by the ~~department~~ division according to the written plan's schedule.

25  
 26 SECTION 457. Arkansas Code § 8-9-403(c)(3)(C)(i), concerning  
 27 requirements, prohibited activities, and operation of waste tire sites, is  
 28 amended to read as follows:

29 (i) Authorized by the ~~department~~ division;

30  
 31 SECTION 458. Arkansas Code § 8-9-403(e)(2), concerning requirements,  
 32 prohibited activities, and operation of waste tire sites, is amended to read  
 33 as follows:

34 (2) Records of the disposition of the waste tires originating  
 35 from a tire manufacturer shall be maintained by that tire manufacturer for a  
 36 period of at least three (3) years and shall be available for review by the

1 ~~department~~ division.

2  
3 SECTION 459. Arkansas Code § 8-9-404(b)(1)(B), concerning rim removal  
4 fees, import fees, and commercial generator fees, is amended to read as  
5 follows:

6 (B) Seven percent (7%) to be deposited into the ~~Arkansas~~  
7 ~~Department~~ Division of Environmental Quality Fee Trust Fund.

8  
9 SECTION 460. Arkansas Code § 8-9-404(c)(3)(A)(ii), concerning rim  
10 removal fees, import fees, and commercial generator fees, is amended to read  
11 as follows:

12 (ii) Seven percent (7%) to be deposited into the  
13 ~~Arkansas Department~~ Division of Environmental Quality Fee Trust Fund.

14  
15 SECTION 461. Arkansas Code § 8-9-404(d)(7)(B), concerning rim removal  
16 fees, import fees, and commercial generator fees, is amended to read as  
17 follows:

18 (B) Seven percent (7%) to be deposited into the ~~Arkansas~~  
19 ~~Department~~ Division of Environmental Quality Fee Trust Fund.

20  
21 SECTION 462. The introductory language of Arkansas Code § 8-9-405(a),  
22 concerning used tire program reimbursements, is amended to read as follows:

23 (a) ~~By January 1, 2018, the Arkansas Department~~ The Division of  
24 Environmental Quality shall establish the Used Tire Recycling and  
25 Accountability Program to:

26  
27 SECTION 463. Arkansas Code § 8-9-405(b)(7) and (8), concerning used  
28 tire program reimbursements, are amended to read as follows:

29 (7) Provide the ~~department~~ division with business plan  
30 information required under § 8-9-408;

31 (8) Provide the ~~department~~ division with all quarterly financial  
32 information and progress reports related to § 8-9-409;

33  
34 SECTION 464. Arkansas Code § 8-9-405(c)(1), concerning used tire  
35 program reimbursements, is amended to read as follows:

36 (1) Contract with a tire processing facility that is approved by

1 the Director of the ~~Arkansas Department~~ Division of Environmental Quality;

2  
3 SECTION 465. The introductory language of Arkansas Code § 8-9-405(d),  
4 concerning used tire program reimbursements, is amended to read as follows:

5 (d) Moneys disbursed from the Used Tire Recycling Fund by the  
6 ~~department~~ division for reimbursements under this section shall be:

7  
8 SECTION 466. Arkansas Code § 8-9-405(e)(2), concerning used tire  
9 program reimbursements, is amended to read as follows:

10 (2) If there are insufficient moneys available in a quarter to  
11 make reimbursements for all submitted requests under any funding level under  
12 subsection (f) of this section, the ~~department~~ division shall calculate the  
13 total remaining funding available for the funding level and allocate the  
14 moneys available for reimbursement to each used tire program based on a pro  
15 rata share of each used tire program's reimbursement request compared to the  
16 total moneys available for that funding level.

17  
18 SECTION 467. Arkansas Code § 8-9-405(g), concerning used tire program  
19 reimbursements, is amended to read as follows:

20 (g) At the request of a used tire program that needs operational  
21 assistance or guidance on compliance with this subchapter, the ~~department~~  
22 division shall provide to the used tire program operational assistance or  
23 guidance on compliance with this subchapter.

24  
25 SECTION 468. The introductory language of Arkansas Code § 8-9-405(h),  
26 concerning used tire program reimbursements, is amended to read as follows:

27 (h) The ~~department~~ division shall:

28  
29 SECTION 469. Arkansas Code § 8-9-408(a), concerning accountability  
30 requirements for used tire programs, is amended to read as follows:

31 (a) On or before December 31, 2017, a used tire program that receives  
32 funding under this subchapter shall provide the Arkansas Department of  
33 Environmental Quality, now the Division of Environmental Quality, with a  
34 business plan that establishes its current operating plan and a proposed  
35 operating plan for calendar year 2018 and approved by its board.

36

1 SECTION 470. Arkansas Code § 8-9-408(c)-(e), concerning accountability  
2 requirements for used tire programs, are amended to read as follows:

3 (c) A used tire program shall submit a revised business plan if there  
4 is a substantial change in the used tire program operations or if the  
5 ~~department~~ division requests a revised business plan.

6 (d) A business plan or revised business plan submitted under this  
7 subchapter is effective after approval by the ~~department~~ division or its  
8 designee.

9 (e)(1) The approved business plan or approved revised business plan  
10 shall include the approved business plan rates for each used tire program.

11 (2)(A) The ~~department~~ division shall cooperate with the used  
12 tire programs and other entities to develop each used tire program's approved  
13 business plan rates for recyclable tires and waste tires.

14 (B) The approved business plan rates shall also use the  
15 size of a tire, including without limitation small tires, large tires, and  
16 extra-large tires, as a factor for determining the approved business plan  
17 rates.

18  
19 SECTION 471. Arkansas Code § 8-9-409(a), concerning the performance  
20 and efficiency evaluations for the used tire programs and the Used Tire  
21 Recycling and Accountability Program, is amended to read as follows:

22 (a) The ~~Arkansas Department~~ Division of Environmental Quality shall  
23 develop a system to evaluate and report the performance and efficiency of  
24 used tire programs and the Used Tire Recycling and Accountability Program.  
25

26 SECTION 472. Arkansas Code § 8-9-411(a)(2), concerning tire  
27 transporter's licenses, is amended to read as follows:

28 (2) Obtain for each vehicle a tire transporter number provided  
29 by the ~~Arkansas Department~~ Division of Environmental Quality used for the  
30 electronic uniform used tire manifest system;  
31

32 SECTION 473. Arkansas Code § 8-9-411(b), concerning tire transporter's  
33 licenses, is amended to read as follows:

34 (b) For each tire transporter licensed under this section, the  
35 ~~department~~ division shall assign a tire transporter number and include the  
36 tire transporter information in the electronic uniform used tire manifest

1 system.

2

3 SECTION 474. Arkansas Code § 8-9-415(b)(6), concerning permitting,  
4 licensing, inspections, procedures, enforcement, and penalties for a person  
5 who receives funding regarding tire collection and disposal, is amended to  
6 read as follows:

7 (6) Failure to provide documentation or reports required to be  
8 filed with the ~~Arkansas Department~~ Division of Environmental Quality under  
9 this subchapter.

10

11 SECTION 475. The introductory language of Arkansas Code § 8-9-  
12 415(c)(1), concerning permitting, licensing, inspections, procedures,  
13 enforcement, and penalties for a person who receives funding regarding tire  
14 collection and disposal, is amended to read as follows:

15 (c)(1) If a used tire program fails to submit a business plan that is  
16 approved by the ~~department~~ division on or before July 1, 2018, the used tire  
17 program and all regional solid waste management boards included in the used  
18 tire program on July 1, 2018, are:

19

20 SECTION 476. Arkansas Code § 8-9-415(c)(2), concerning permitting,  
21 licensing, inspections, procedures, enforcement, and penalties for a person  
22 who receives funding regarding tire collection and disposal, is amended to  
23 read as follows:

24 (2)(A) The ~~department~~ division may designate a qualified entity  
25 to perform the duties related to the operation and administration of a used  
26 tire program deemed ineligible under subdivision (c)(1) of this section.

27

28 SECTION 477. Arkansas Code § 8-9-502, concerning members of the  
29 Arkansas Newspaper Recycling Advisory Committee, is amended to read as  
30 follows:

31 8-9-502. Members.

32 The Director of the ~~Arkansas Department~~ Division of Environmental  
33 Quality shall appoint the Arkansas Newspaper Recycling Advisory Committee  
34 consisting of:

35 (1) The Chief of the Marketing Division of the ~~Arkansas~~  
36 ~~Department~~ Division of Environmental Quality or his or her designee;

1           (2) The Executive Director of the Arkansas Press Association,  
2 Inc. or his or her designee; and

3           (3)(A) At least six (6) members representing the Arkansas  
4 newspaper industry and newsprint manufacturers doing business in Arkansas.

5           (B) Provided, however, these members shall be selected  
6 from a list of names of potential members to be provided by the President of  
7 the Board of Directors of the Arkansas Press Association, Inc.

8  
9           SECTION 478. Arkansas Code § 8-9-603, concerning the definition of  
10 "department" and "director" under the Mercury Switch Removal Act, are  
11 repealed.

12           ~~(2) "Department" means the Arkansas Department of Environmental~~  
13 ~~Quality;~~

14           ~~(3) "Director" means the Director of the Arkansas Department of~~  
15 ~~Environmental Quality;~~

16  
17           SECTION 479. Arkansas Code § 8-9-604(a), concerning the mercury  
18 minimization plan, is amended to read as follows:

19           (a) Within ninety (90) days after August 12, 2005, every manufacturer  
20 of vehicles sold within this state, individually or as part of a group, shall  
21 develop in consultation with the Arkansas Department of Environmental  
22 Quality, now the Division of Environmental Quality a mercury minimization  
23 plan prepared pursuant to this section and shall submit the mercury  
24 minimization plan to the Director of the Arkansas Department of Environmental  
25 Quality, now the Division of Environmental Quality for review and approval  
26 pursuant to § 8-9-605.

27  
28           SECTION 480. Arkansas Code § 8-9-605(a)(1), concerning approval and  
29 implementation of the mercury minimization plan, is amended to read as  
30 follows:

31           (a)(1) Within one hundred twenty (120) days after receipt of a mercury  
32 minimization plan, the Director of the Arkansas Department of Environmental  
33 Quality, now the Division of Environmental Quality shall approve, disapprove,  
34 or conditionally approve the entire mercury minimization plan. The director  
35 may solicit input from representatives of vehicle recyclers, scrap recycling  
36 facilities, and other stakeholders as the director deems appropriate.



1  
2 SECTION 481. Arkansas Code § 8-9-606(c)(2), concerning the removal and  
3 proper management of mercury-added vehicle components, is amended to read as  
4 follows:

5 (2) These records shall be made available for review by the  
6 ~~Arkansas Department~~ Division of Environmental Quality upon the request of the  
7 ~~department~~ division.

8  
9 SECTION 482. Arkansas Code § 8-9-606(e)(2), concerning the removal and  
10 proper management of mercury-added vehicle components, is amended to read as  
11 follows:

12 (2) Provisions of the rules and regulations concerning universal  
13 waste adopted by the ~~department~~ division pursuant to the Arkansas Hazardous  
14 Waste Management Act of 1979, § 8-7-201 et seq.

15  
16 SECTION 483. The introductory language of Arkansas Code § 8-9-607(a),  
17 concerning annual reporting on a mercury minimization plan, is amended to  
18 read as follows:

19 (a) One (1) year after the implementation of a mercury minimization  
20 plan approved pursuant to § 8-9-605, and annually thereafter, a manufacturer  
21 subject to § 8-9-604 shall report individually or as part of a group to the  
22 Director of the ~~Arkansas Department~~ Division of Environmental Quality  
23 concerning the implementation of the mercury minimization plan. The report  
24 shall include, but need not be limited to, the following:

25  
26 SECTION 484. The introductory language of Arkansas Code § 8-9-608(a),  
27 concerning design for recycling regarding the mercury minimization plan, is  
28 amended to read as follows:

29 (a) One (1) year after the implementation of a mercury minimization  
30 plan approved pursuant to § 8-9-605, and annually thereafter, a manufacturer  
31 subject to § 8-9-604 shall report individually or as part of a group to the  
32 Director of the ~~Arkansas Department~~ Division of Environmental Quality  
33 concerning the steps being taken by manufacturers to design vehicles and  
34 their components for recycling. The report shall include, but need not be  
35 limited to, the following:

1 SECTION 485. Arkansas Code § 8-9-608(b), concerning design for  
2 recycling regarding the mercury minimization plan, is amended to read as  
3 follows:

4 (b) The ~~Arkansas Department~~ Division of Environmental Quality may  
5 conduct hearings from time to time as the director deems appropriate to  
6 evaluate the steps manufacturers are taking to design for recycling and to  
7 recommend additional legislative action as may be appropriate in order to  
8 promote vehicle recycling for the purposes of the preservation of scarce  
9 resources and the safe and efficient reduction of solid waste.

10  
11 SECTION 486. Arkansas Code § 8-9-609 is amended to read as follows:

12 8-9-609. Rules and regulations – Authority of Arkansas Pollution  
13 Control and Ecology Commission.

14 The Arkansas Pollution Control and Ecology Commission may adopt rules  
15 and regulations to effectuate and implement the purposes and intent of this  
16 subchapter and the powers and duties of the ~~Arkansas Department~~ Division of  
17 Environmental Quality.

18  
19 SECTION 487. Arkansas Code § 8-10-302(a)(2)(C)(iii), concerning the  
20 construction of a motor vehicle racing facility and the requirement of a  
21 petition, is amended to read as follows:

22 (iii) It shall be the duty of the county clerk or  
23 city clerk, as the case may be, to determine the sufficiency of the  
24 signatures and to certify the sufficiency or insufficiency of the signatures  
25 in writing to the ~~Arkansas Department~~ Division of Environmental Quality.

26  
27 SECTION 488. Arkansas Code § 8-10-303(a)(1)(A), concerning a permit  
28 requirement to construct a motor vehicle racing facility, is amended to read  
29 as follows:

30 (a)(1)(A) Due to the noise pollution and air pollution from the racing  
31 vehicles and traffic congestion caused by motor vehicle racing facilities, no  
32 motor vehicle racing facility shall be constructed in this state after  
33 passage of this section without the consent of at least seventy-five percent  
34 (75%) of the property owners and seventy-five percent (75%) of the registered  
35 voters within three (3) miles of the outside boundary of the proposed motor  
36 vehicle racing facility and without an annual permit issued by the ~~Arkansas~~

1 ~~Department~~ Division of Environmental Quality.

2  
3 SECTION 489. Arkansas Code § 8-10-303(a)(2)(C)(iii), concerning a  
4 permit requirement to construct a motor vehicle racing facility, is amended  
5 to read as follows:

6 (iii) It shall be the duty of the county clerk or  
7 city clerk, as the case may be, to determine the sufficiency of the  
8 signatures and to certify the sufficiency or insufficiency of the signatures  
9 in writing to the ~~department~~ division.

10  
11 SECTION 490. Arkansas Code § 8-10-303(a)(3)(A)(i), concerning a permit  
12 requirement to construct a motor vehicle racing facility, is amended to read  
13 as follows:

14 (3)(A)(i) Once the sufficiency of the petitions is determined,  
15 the persons or entity proposing and constructing a motor vehicle racing  
16 facility after August 1, 1997, shall seek the approval of and issuance of an  
17 annual permit from the ~~department~~ division. The ~~department's~~ division's  
18 approval shall be sought by filing a permit application with the ~~department~~  
19 division.

20  
21 SECTION 491. Arkansas Code § 8-10-303(a)(3)(A)(ii)(e), concerning a  
22 permit requirement to construct a motor vehicle racing facility, is amended  
23 to read as follows:

24 (e) Any other relevant permit information as  
25 may be determined necessary for the permit application by the ~~department~~  
26 division.

27  
28 SECTION 492. Arkansas Code § 8-10-303(a)(3)(B)-(D), concerning a  
29 permit requirement to construct a motor vehicle racing facility, are amended  
30 to read as follows:

31 (B) For the initial permit application for new motor  
32 vehicle racing facilities to be constructed, the ~~department~~ division shall  
33 conduct a public hearing on the proposed motor vehicle racing facility. The  
34 ~~department~~ division shall set a date for the public hearing to be held on the  
35 proposed motor vehicle racing facility permit which shall not be less than  
36 thirty (30) days after the filing of the initial permit application. The

1 hearing under this subdivision (a)(3)(B) for the initial permit may be  
2 adjourned and continued if necessary. In its discretion, the ~~department~~  
3 division may hold public hearings for the renewal of any permits as is  
4 necessary. Any interested persons may appear and contest the granting of the  
5 approval or renewal of the motor vehicle racing facility permit. Affidavits  
6 in support of or against the proposed motor vehicle racing facility or a  
7 permit renewal, which may be prepared and submitted, shall be examined by the  
8 ~~department~~ division.

9 (C) After the hearing for the initial permit or upon  
10 application for the renewal of its annual permit, if the ~~department~~ division  
11 shall be satisfied that the benefits of the motor vehicle racing facility are  
12 sustained by proof and outweigh its impact by the noise, air pollution, and  
13 traffic congestion caused by motor vehicle racing facilities, then the  
14 ~~department~~ division shall grant the initial permit approving the proposed  
15 motor vehicle racing facility or shall renew approval to the permitted or  
16 existing motor vehicle racing facility. Renewal of an annual permit may also  
17 be denied if:

18 (i) The motor vehicle racing ~~racing~~ facility is  
19 determined to be in violation of any standards under which the permit was  
20 issued;

21 (ii) The motor vehicle racing ~~racing~~ facility is  
22 constructed or is being operated in a manner that is materially different  
23 than was represented during the petition process; or

24 (iii) Fraud, misrepresentation, or false statement  
25 of facts was used to obtain signatures for the petition process.

26 (D) If any material changes, additions, or improvements  
27 are made to the motor vehicle racing facility, the permit shall be amended  
28 accordingly, and the ~~department~~ division may reconsider the approval of the  
29 permit.

30  
31 SECTION 493. Arkansas Code § 8-10-304(b)(1)(A), concerning motor  
32 vehicle racing facilities in certain municipalities, is amended to read as  
33 follows:

34 (b)(1)(A) A person or entity proposing and constructing a motor  
35 vehicle racing facility under subsection (a) of this section shall seek the  
36 approval of and issuance of an annual permit from the ~~Arkansas Department~~

1 Division of Environmental Quality.

2  
3 SECTION 494. The introductory language of Arkansas Code § 8-10-  
4 304(b)(1)(B), concerning motor vehicle racing facilities in certain  
5 municipalities, is amended to read as follows:

6 (B) The ~~department's~~ division's approval shall be sought  
7 by filing a permit application with the ~~department~~ division, which shall  
8 contain a written proposal for the motor vehicle racing facility containing  
9 the substance of the proposed facility, including:

10  
11 SECTION 495. Arkansas Code § 8-10-304(b)(1)(B)(v), concerning motor  
12 vehicle racing facilities in certain municipalities, is amended to read as  
13 follows:

14 (v) Any other relevant permit information as may be  
15 determined necessary for the permit application by the ~~department~~ division.

16  
17 SECTION 496. Arkansas Code § 8-10-304(b)(2)(A)(i) and (ii), concerning  
18 motor vehicle racing facilities in certain municipalities, are amended to  
19 read as follows:

20 (2)(A)(i) For the initial permit application for new motor  
21 vehicle racing facilities to be constructed, the ~~department~~ division shall  
22 conduct a public hearing on the proposed motor vehicle racing facility.

23 (ii) The ~~department~~ division shall set a date for  
24 the public hearing to be held on the proposed motor vehicle racing facility  
25 permit which shall not be fewer than thirty (30) days after the filing of the  
26 initial permit application.

27  
28 SECTION 497. Arkansas Code § 8-10-304(b)(2)(B), concerning motor  
29 vehicle racing facilities in certain municipalities, is amended to read as  
30 follows:

31 (B)(i) The ~~department~~ division, in its discretion, may  
32 hold public hearings for the renewal of any permits as is necessary.

33 (ii) Any interested persons may appear and contest  
34 the granting of the approval or renewal of the motor vehicle racing facility  
35 permit.

36 (iii) Affidavits in support of or against the

1 proposed motor vehicle racing facility or a permit renewal, which may be  
2 prepared and submitted, shall be examined by the ~~department~~ division.

3  
4 SECTION 498. Arkansas Code § 8-10-304(b)(3), concerning motor vehicle  
5 racing facilities in certain municipalities, is amended to read as follows:

6 (3) After the hearing for the initial permit or upon application  
7 for the renewal of its annual permit, if the ~~department~~ division is satisfied  
8 that the benefits of the motor vehicle racing facility are sustained by proof  
9 and outweigh its impact by the noise, air pollution, and traffic congestion  
10 caused by motor vehicle racing facilities, then the ~~department~~ division shall  
11 grant the initial permit approving the proposed motor vehicle racing facility  
12 or shall renew approval to the permitted or existing motor vehicle racing  
13 facility.

14  
15 SECTION 499. Arkansas Code § 8-10-304(b)(5), concerning motor vehicle  
16 racing facilities in certain municipalities, is amended to read as follows:

17 (5) If any material changes, additions, or improvements are made  
18 to the motor vehicle racing facility, the permit shall be amended  
19 accordingly, and the ~~department~~ division may reconsider the approval of the  
20 permit.

21  
22 SECTION 500. Arkansas Code § 8-11-103(a)(1), concerning the regulatory  
23 flexibility of the Arkansas Department of Environmental Quality, is amended  
24 to read as follows:

25 (a)(1) The ~~Arkansas Department~~ Division of Environmental Quality, by  
26 order of the Director of the ~~Arkansas Department~~ Division of Environmental  
27 Quality consistent with the purposes of this chapter, may approve requests  
28 which allow an applicant to use alternative methods to comply with an  
29 Arkansas Pollution Control and Ecology Commission rule regarding the control  
30 or abatement of pollution.

31  
32 SECTION 501. Arkansas Code § 8-11-103(d), concerning the regulatory  
33 flexibility of the Arkansas Department of Environmental Quality, is amended  
34 to read as follows:

35 (d) The ~~department~~ division may establish a reasonable fee for  
36 applications under this section.

1  
2 SECTION 502. Arkansas Code § 8-12-104(b)(4), concerning the creation  
3 of the Natural Resources Damages Advisory Board, is amended to read as  
4 follows:

5 (4) One (1) member shall be a representative from the ~~Arkansas~~  
6 ~~Department~~ Division of Environmental Quality;

7  
8 SECTION 503. Arkansas Code § 8-13-101(2), concerning the purpose of a  
9 management organization for the Arkansas Department of Environmental Quality,  
10 is amended to read as follows:

11 (2) Environmental protection and improvement could be enhanced  
12 by authorizing the Director of the ~~Arkansas Department~~ Division of  
13 Environmental Quality to design and establish a management organization which  
14 incorporates specific goals for environmental protection and uses  
15 environmental indicators to measure agency performance; and

16  
17 SECTION 504. Arkansas Code § 8-13-101(3)(B), concerning the purpose of  
18 a management organization for the Arkansas Department of Environmental  
19 Quality, is amended to read as follows:

20 (B) Organizes the ~~Arkansas Department~~ Division of  
21 Environmental Quality according to business function;

22  
23 SECTION 505. Arkansas Code § 8-13-102(a), concerning the authority of  
24 the Director of the Arkansas Department of Environmental Quality to adopt  
25 alternative organizational structure, is amended to read as follows:

26 (a) The Director of the ~~Arkansas Department~~ Division of Environmental  
27 Quality, with the advice and consent of the ~~Governor~~ Secretary of the  
28 Department of Energy and Environment, may establish any number of divisions,  
29 offices, or units, for the conduct of environmental affairs of the state and  
30 may prescribe the functions and duties of each division.

31  
32 SECTION 506. Arkansas Code § 8-13-102(b)(2) and (3), concerning the  
33 authority of the Director of the Arkansas Department of Environmental Quality  
34 to adopt alternative organizational structure, are amended to read as  
35 follows:

36 (2)(A) This section does not limit any provision of state law

1 directing or requiring the ~~Arkansas Department~~ Division of Environmental  
2 Quality to carry out any function or provide any service.

3 (B) However, nothing in this section shall be construed to  
4 prevent the reassignment of functions or services assigned by state law where  
5 reassignment does not alter the obligation of the ~~department~~ division to  
6 continue providing such function or service;

7 (3) Such reorganization shall be based on a comprehensive  
8 analysis of all of the functions and duties administered by the ~~department~~  
9 division and the development of a ten-year strategic plan of ~~department~~  
10 division operations; and

11  
12 SECTION 507. Arkansas Code § 8-13-103(a), concerning requirements for  
13 comprehensive analysis and strategic planning by the Arkansas Department of  
14 Environmental Quality, is amended to read as follows:

15 (a) Any reorganization of the functions and duties for the conduct of  
16 environmental affairs through the provisions of this chapter shall be based  
17 on a comprehensive analysis of the existing operations of the ~~Arkansas~~  
18 ~~Department~~ Division of Environmental Quality and the development of a ten-  
19 year strategic plan for ~~department~~ division operations. Such strategic plan  
20 shall be reviewed and updated on an annual basis and shall be made available  
21 for public review through formal notice.

22  
23 SECTION 508. Arkansas Code § 8-13-103(b)(1), concerning requirements  
24 for comprehensive analysis and strategic planning by the Arkansas Department  
25 of Environmental Quality, is amended to read as follows:

26 (1) A comprehensive analysis of each existing division,  
27 function, and duty performed by the ~~department~~ division in providing  
28 environmental services; and

29  
30 SECTION 509. Arkansas Code § 8-13-103(c)(1), concerning requirements  
31 for comprehensive analysis and strategic planning by the Arkansas Department  
32 of Environmental Quality, is amended to read as follows:

33 (c)(1) The strategic plan shall outline a management organization for  
34 the ~~department~~ division that promotes environmental protection and  
35 enhancement.

36



1 SECTION 510. Arkansas Code § 8-13-103(c)(2)(B)(iii), concerning  
2 requirements for comprehensive analysis and strategic planning by the  
3 Arkansas Department of Environmental Quality, is amended to read as follows:

4 (iii) Such indicators shall be developed by a work  
5 group appointed by the Director of the ~~Arkansas Department~~ Division of  
6 Environmental Quality consisting of representatives of the ~~department~~  
7 division working in collaboration with representatives from state and federal  
8 agencies, city and county officials, nonprofit organizations, minority  
9 groups, industry, colleges and universities, civic groups, and other  
10 stakeholders in environmental affairs;

11  
12 SECTION 511. Arkansas Code § 8-13-103(c)(2)(C), concerning  
13 requirements for comprehensive analysis and strategic planning by the  
14 Arkansas Department of Environmental Quality, is amended to read as follows:

15 (C) To organize the ~~department~~ division according to  
16 business functions and duties;

17  
18 SECTION 512. Arkansas Code § 11-10-314(j)(6), concerning disclosure of  
19 information obtained by the Director of the Department of Workforce Services,  
20 is amended to read as follows:

21 (6) The ~~Arkansas Department~~ Division of Environmental Quality  
22 may be provided the employer's name, mailing address, business location in  
23 Arkansas, the current number of employees, and the code for each employer  
24 classified by the agency in the Standard Industrial Classification Code or an  
25 equivalent classification code under the North American Industry  
26 Classification System.

27  
28 SECTION 513. Arkansas Code § 12-63-402(c)(1)(B), concerning the  
29 Adjutant General of the State of Arkansas as the custodian of all military  
30 property and military reservations, is amended to read as follows:

31 (B) The laws, regulations, rules, or orders of the  
32 ~~Arkansas Department~~ Division of Environmental Quality or the United States  
33 Environmental Protection Agency; or

34  
35 SECTION 514. Arkansas Code § 12-63-402(c)(2)(B), concerning the  
36 Adjutant General of the State of Arkansas as the custodian of all military

1 property and military reservations, is amended to read as follows:

2 (B) The Attorney General, after conferring with the  
3 Director of the ~~Arkansas Department~~ Division of Environmental Quality, shall  
4 advise the Governor in writing that the potential financial liability of the  
5 state for environmental remediation is de minimus, and if the Governor shall  
6 so approve and concur in the Attorney General's advice; or

7  
8 SECTION 515. Arkansas Code § 12-75-132(b)(6), concerning the creation  
9 of the Arkansas Homeland Security Advisory Group, is amended to read as  
10 follows:

11 (6) ~~Arkansas Department~~ Division of Environmental Quality;

12  
13 SECTION 516. Arkansas Code § 12-84-104(a)(1)(A), concerning the State  
14 Emergency Response Commission, is amended to read as follows:

15 (A) The directors of the Department of Health, the  
16 ~~Arkansas Department~~ Division of Environmental Quality, the ~~Department~~  
17 Division of Arkansas State Police, the Arkansas Department of Emergency  
18 Management, the ~~Department~~ Division of Labor, the Arkansas Fire Training  
19 Academy, ~~and~~ the Arkansas Department of Transportation, and the Adjutant  
20 General, or their designated representatives;

21  
22 SECTION 517. Arkansas Code § 14-25-201(d)(1), concerning responsible  
23 management entities and wastewater treatment systems, is amended to read as  
24 follows:

25 (d)(1) Any installation, operation, or maintenance performed on a  
26 wastewater treatment system on behalf of a responsible management entity  
27 shall be done in compliance with the Arkansas Water and Air Pollution Control  
28 Act, § 8-4-101 et seq., and the regulations of the Arkansas Pollution Control  
29 and Ecology Commission as administered by the ~~Arkansas Department~~ Division of  
30 Environmental Quality or its successor and the Department of Health or its  
31 successor.

32  
33 SECTION 518. Arkansas Code § 14-25-201(e)(1)(A), concerning  
34 responsible management entities and wastewater treatment systems, is amended  
35 to read as follows:

36 (A) Before the construction of a wastewater treatment

1 system begins, the developer secures written approval of the proposed  
2 wastewater treatment system from the Department of Health and complies with  
3 all applicable permitting requirements, including stormwater, through the  
4 ~~Arkansas Department~~ Division of Environmental Quality pursuant to the  
5 Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., and the  
6 regulations of the Arkansas Pollution Control and Ecology Commission;

7  
8 SECTION 519. Arkansas Code § 14-72-101(a), concerning municipal water  
9 and sewer revenue bonds for repayment of water pollution control grants, is  
10 amended to read as follows:

11 (a) Any city of the first class, city of the second class, or  
12 incorporated town, hereinafter referred to as a “municipality”, which has  
13 received from the ~~Arkansas Department~~ Division of Environmental Quality a  
14 water pollution control project grant funded from the proceeds of bonds of  
15 the ~~department~~ division issued pursuant to §§ 8-5-301 – 8-5-318 [repealed]  
16 may issue water revenue bonds under the provisions of § 14-234-201 et seq.,  
17 sewer revenue bonds under the provisions of §§ 14-235-201 – 14-235-224, or  
18 combined water and sewer revenue bonds for the purpose of refunding the bonds  
19 of the ~~department~~ division issued to fund the grant.

20  
21 SECTION 520. Arkansas Code § 14-86-302(a), concerning the  
22 applicability of laws to entities under a federal order for a sanitary sewer  
23 discharges, is amended to read as follows:

24 (a) The provisions of this subchapter shall not be applicable to any  
25 city, county, or area which is under an order from the ~~Arkansas Department~~  
26 Division of Environmental Quality and the United States Environmental  
27 Protection Agency to meet the minimum requirements of the United States  
28 Environmental Protection Agency for sanitary sewer discharge.

29  
30 SECTION 521. Arkansas Code § 14-116-501(d)(2)(A), concerning proposed  
31 improvement plan for assessment-based water district projects, is amended to  
32 read as follows:

33 (2)(A) The Arkansas Natural Resources Commission shall solicit  
34 written comment from appropriate federal and state agencies on the items  
35 described in the final survey and report, including, but not limited to, the  
36 United States Army Corps of Engineers, the United States Fish and Wildlife

1 Service, the Arkansas State Game and Fish Commission, the ~~Department~~ Division  
2 of Arkansas Heritage, and the ~~Arkansas Department~~ Division of Environmental  
3 Quality.

4  
5 SECTION 522. Arkansas Code § 14-206-105(a)(1)(A), concerning proof of  
6 service, notice, and filing fee for an application for a gas or electric  
7 utility, is amended to read as follows:

8 (A) The ~~Arkansas Department~~ Division of Environmental  
9 Quality;

10  
11 SECTION 523. Arkansas Code § 14-206-105(a)(1)(D), concerning proof of  
12 service, notice, and filing fee for an application for a gas or electric  
13 utility, is amended to read as follows:

14 (D) The Arkansas Energy Office of the ~~Arkansas Department~~  
15 Division of Environmental Quality;

16  
17 SECTION 524. Arkansas Code § 14-229-101(b)(9), concerning the creation  
18 and members of the Individual Sewage Systems Advisory Committee, is amended  
19 to read as follows:

20 (9) The Director of the ~~Arkansas Department~~ Division of  
21 Environmental Quality or a designee;

22  
23 SECTION 525. Arkansas Code § 14-234-122 is amended to read as follows:  
24 14-234-122. Penalty provision.

25 Any entity not complying with §§ 14-234-119 – 14-234-121 may be subject  
26 to fines up to one thousand dollars (\$1,000) by the Department of Health, the  
27 ~~Arkansas Department~~ Division of Environmental Quality, or the Arkansas  
28 Natural Resources Commission and any permits or licenses obtained from these  
29 agencies are subject to cancellation or nonrenewal.

30  
31 SECTION 526. Arkansas Code § 14-235-304(2)(B), concerning restrictions  
32 on connections to a municipal sewer, is amended to read as follows:

33 (B) A municipal board of health may order or compel the  
34 building of a sewer by a property owner under subdivision (2)(A) of this  
35 section only if the existing sewer on the property owner's property is the  
36 subject of an enforcement action by the ~~Arkansas Department~~ Division of

1 Environmental Quality or a prosecuting attorney.

2  
3 SECTION 527. Arkansas Code § 14-236-104(a)(3), concerning certain  
4 individual systems excepted from the Arkansas Sewage Disposal Systems Act, is  
5 amended to read as follows:

6 (3) In a subdivision for which a master plan has been approved  
7 by the Department of Health or the ~~Arkansas Department~~ Division of  
8 Environmental Quality prior to July 1, 1977, or for which the Department of  
9 Health or the ~~Arkansas Department~~ Division of Environmental Quality has  
10 otherwise previously issued its written approval for the installation of  
11 individual sewage disposal systems and where individual lots have been  
12 developed or sold in reliance upon the prior written approval, individual  
13 sewage disposal systems shall not be required to conform to more stringent  
14 specifications as to design, construction, and installation than those  
15 standards in effect at the time of or referred to in the prior written  
16 approval.

17  
18 SECTION 528. Arkansas Code § 14-236-109 is amended to read as follows:  
19 14-236-109. Property owners' associations – Powers and duties.

20 Property owners' associations that construct and maintain or have  
21 constructed and maintained sewage disposal facilities in accordance with the  
22 standards and regulations established by the Division of Environmental Health  
23 Protection of the Department of Health or the ~~Arkansas Department~~ Division of  
24 Environmental Quality shall have jurisdiction over the disposal of sewage  
25 within and for the subdivided area over which their authority extends and  
26 shall have general supervision and authority over the location, design,  
27 construction, installation, and operation of individual and community sewage  
28 disposal systems to the extent that the general supervision and authority is  
29 consistent with this chapter and the rules and regulations promulgated  
30 thereunder.

31  
32 SECTION 529. Arkansas Code § 14-250-102(3), concerning the definition  
33 of "department" under the Wastewater Treatment Districts Act, is repealed.

34 ~~(3) "Department" means the Arkansas Department of Environmental~~  
35 ~~Quality;~~

1 SECTION 530. Arkansas Code § 15-4-2406(a)(2)(B), concerning refund of  
2 the recycling tax credit, is amended to read as follows:

3 (B) The Director of the ~~Arkansas Department~~ Division of  
4 Environmental Quality finds that the qualified manufacturer of steel has  
5 operated the waste reduction, reuse, or recycling equipment in a manner which  
6 demonstrates a pattern of intentional failure to comply with final  
7 administrative or judicial orders which clearly indicates a disregard for  
8 environmental regulation.

9  
10 SECTION 531. Arkansas Code § 15-5-901(d)(1), concerning the  
11 establishment of the Construction Assistance Revolving Loan Fund, is amended  
12 to read as follows:

13 (d)(1) There is established a separate account within the Construction  
14 Assistance Revolving Loan Fund, designated the "Remedial Action Account",  
15 into which moneys identified in § 8-7-504(c) and any other moneys as  
16 designated by the Director of the ~~Arkansas Department~~ Division of  
17 Environmental Quality shall be deposited.

18  
19 SECTION 532. Arkansas Code § 15-5-902(b), concerning the  
20 administration of the Construction Assistance Revolving Loan Fund, is amended  
21 to read as follows:

22 (b) The commission may enter into contracts and other agreements in  
23 connection with the operation of the fund, including without limitation  
24 contracts and agreements with federal agencies, local governmental entities,  
25 the Arkansas Development Finance Authority, the ~~Arkansas Department~~ Division  
26 of Environmental Quality, and other persons to the extent necessary or  
27 convenient for the implementation of the fund and programs financed, in whole  
28 or in part, with moneys in the fund.

29  
30 SECTION 533. Arkansas Code § 15-5-909, concerning the definition of  
31 "department" under the law regarding Construction Assistance Revolving Loans,  
32 is repealed.

33 ~~(5) "Department" means the Arkansas Department of Environmental~~  
34 ~~Quality or a successor agency of the state;~~

35  
36 SECTION 534. The introductory language of Arkansas Code § 15-5-

1 1204(a)(1), concerning issuance of revenue bonds by the Arkansas Development  
2 Finance Authority of the Director of the Arkansas Department of Environmental  
3 Quality, is amended to read as follows:

4 (a)(1) Upon the request of the Director of the ~~Arkansas Department~~  
5 Division of Environmental Quality and based upon an estimate by the  
6 Department of Finance and Administration of the pledged fees to be collected,  
7 the Arkansas Development Finance Authority may issue bonds for the purpose  
8 of:

9  
10 SECTION 535. Arkansas Code § 15-5-1502(2), concerning the definition  
11 of "department" under the Arkansas Sewage Disposal Systems Act, is repealed.

12 ~~(2) "Department" means the Arkansas Department of Environmental~~  
13 ~~Quality or its successor; and~~

14  
15 SECTION 536. Arkansas Code § 15-5-1503(a)(1), concerning the  
16 establishment and use of the Brownfield Revolving Loan Fund, is amended to  
17 read as follows:

18 (a)(1) There is established on the books of the Arkansas Development  
19 Finance Authority a special restricted fund to be known as the "Brownfield  
20 Revolving Loan Fund", which shall be maintained by the authority and  
21 administered by the ~~Arkansas Department~~ Division of Environmental Quality for  
22 the purposes stated under this subchapter.

23  
24 SECTION 537. Arkansas Code § 15-5-1505 is amended to read as follows:  
25 15-5-1505. Brownfield Revolving Loan Fund – Administration.

26 (a)(1) The Brownfield Revolving Loan Fund shall be administered by the  
27 ~~Arkansas Department~~ Division of Environmental Quality, with the Arkansas  
28 Development Finance Authority serving as agent for the ~~department~~ division.

29 (2) The ~~department~~ division may establish procedures to  
30 administer the fund and the programs financed, in whole or in part, with  
31 moneys from the fund that are used for the purposes stated under this  
32 subchapter.

33 (3) The ~~department~~ division may enter into contracts and other  
34 agreements in connection with the operation of the fund, including contracts  
35 and agreements with federal agencies, local governmental entities, the  
36 authority, and other persons, to implement this subchapter.

1 (b) The ~~department~~ division shall have full authority to operate the  
2 fund and may make withdrawals as necessary to achieve the intended purposes  
3 of this subchapter.

4  
5 SECTION 538. The introductory language of Arkansas Code § 15-5-  
6 1506(a), concerning the loans and grants from the Brownfield Revolving Loan  
7 Fund, is amended to read as follows:

8 (a) With approval of the ~~Arkansas Department~~ Division of Environmental  
9 Quality, the Arkansas Development Finance Authority may:

10  
11 SECTION 539. Arkansas Code § 15-5-1509 is amended to read as follows:  
12 15-5-1509. Administrative fees.

13 (a) The ~~Arkansas Department~~ Division of Environmental Quality and the  
14 Arkansas Development Finance Authority may establish fees for their  
15 respective administrative services under this subchapter, including the costs  
16 of financing loans and awarding grants under this subchapter.

17 (b) The authority to establish fees under this section is supplemental  
18 to the authority granted to the ~~department~~ division or the authority under  
19 other laws.

20  
21 SECTION 540. Arkansas Code § 15-5-1510 is amended to read as follows:  
22 15-5-1510. Collection of fees.

23 (a)(1) With approval of the ~~Arkansas Department~~ Division of  
24 Environmental Quality, the Arkansas Development Finance Authority may collect  
25 administrative fees and remit the fees directly to the authority within  
26 fifteen (15) days after each payment is collected.

27 (2) The authority shall remit any administrative fee owed to the  
28 ~~department~~ division, and the fees shall be deposited into the Brownfield  
29 Revolving Loan Fund on a quarterly basis.

30 ~~(3)~~(b) Any administrative fees owed to the authority shall not  
31 be deposited into the fund.

32  
33 SECTION 541. Arkansas Code § 15-5-1511 is amended to read as follows:  
34 15-5-1511. Regulations.

35 The ~~Arkansas Department~~ Division of Environmental Quality may adopt  
36 regulations as necessary to implement this subchapter.



1  
2 SECTION 542. Arkansas Code § 15-10-202(5), concerning a declaration of  
3 policy by the General Assembly under the Arkansas Energy Reorganization and  
4 Policy Act of 1981, is amended to read as follows:

5 (5) It is in the best interest of the citizens of this state to  
6 establish the Arkansas Energy Office of the ~~Arkansas Department~~ Division of  
7 Environmental Quality to coordinate the planning and execution of  
8 comprehensive energy conservation programs; and

9  
10 SECTION 543. Arkansas Code § 15-10-203 is amended to read as follows:

11 15-10-203. Arkansas Energy Office – Creation.

12 (a)(1) There is created the Arkansas Energy Office of the ~~Arkansas~~  
13 ~~Department~~ Division of Environmental Quality.

14 (2)(A) The executive head of this office shall be the Director  
15 of the Arkansas Energy Office.

16 (B) The Director of the Arkansas Energy Office shall be  
17 appointed by the ~~Director of the Arkansas Department of Environmental Quality~~  
18 Secretary of the Department of Energy and Environment with the advice and  
19 consent of the Governor.

20 (b) The office shall consist of such sections as may be established by  
21 the Director of the Arkansas Energy Office, with the approval of the Director  
22 of the ~~Arkansas Department of~~ Division of Environmental Quality and the  
23 secretary.

24  
25 SECTION 544. Arkansas Code § 15-10-204(c), concerning the Director of  
26 the Arkansas Energy Office, is amended to read as follows:

27 (c) In addition to other duties and functions prescribed for the  
28 Director of the Arkansas Energy Office of the ~~Arkansas Department~~ Division of  
29 Environmental Quality elsewhere in this subchapter, the Director of the  
30 Arkansas Energy Office of the ~~Arkansas Department~~ Division of Environmental  
31 Quality shall supervise the daily operation of the office and advise the  
32 Director of the ~~Arkansas Department~~ Division of Environmental Quality, the  
33 Governor, and the General Assembly on energy matters.

34  
35 SECTION 545. The introductory language of Arkansas Code § 15-10-  
36 205(a), concerning the powers and duties of the Arkansas Energy Office of the

1 Arkansas Department of Environmental Quality, is amended to read as follows:

2 (a) The Arkansas Energy Office of the ~~Arkansas Department~~ Division of  
3 Environmental Quality shall coordinate authority and planning by the state in  
4 energy-related matters and shall have the following duties and  
5 responsibilities:

6  
7 SECTION 546. The introductory language of Arkansas Code § 15-10-  
8 903(a)(1), concerning a rebate for refueling stations provided by the  
9 Arkansas Energy Office of the Arkansas Department of Environmental Quality,  
10 is amended to read as follows:

11 (a)(1) The Arkansas Energy Office of the ~~Arkansas Department~~ Division  
12 of Environmental Quality may offer a rebate for each approved private  
13 electric vehicle charging station, public electric vehicle charging station,  
14 compressed natural gas refueling station, liquefied natural gas refueling  
15 station, and liquefied petroleum gas refueling station that is:

16  
17 SECTION 547. Arkansas Code § 15-10-903(a)(2), concerning a rebate for  
18 refueling stations provided by the Arkansas Energy Office of the Arkansas  
19 Department of Environmental Quality, is amended to read as follows:

20 (2) The Director of the ~~Arkansas Department~~ Division of  
21 Environmental Quality may increase the rebate percentages listed under  
22 subdivision (a)(1) of this section if the increase is designated or  
23 authorized by a funding source approved by a federal settlement or state  
24 settlement.

25  
26 SECTION 548. The introductory language of Arkansas Code § 15-10-  
27 904(a), concerning rebates for qualified alternative motor vehicle property,  
28 is amended to read as follows:

29 (a) The Arkansas Energy Office of the ~~Arkansas Department~~ Division of  
30 Environmental Quality may offer a rebate for qualified alternative motor  
31 vehicle property that is:

32  
33 SECTION 549. Arkansas Code § 15-10-904(b), concerning rebates for  
34 qualified alternative motor vehicle property, is amended to read as follows:

35 (b) The Director of the ~~Arkansas Department~~ Division of Environmental  
36 Quality may increase the rebate percentages listed under subsection (a) of

1 this section if the increase is designated or authorized by a funding source  
2 approved by a federal settlement or state settlement.

3  
4 SECTION 550. Arkansas Code § 15-22-222(b), concerning minimum stream  
5 flows established by the Arkansas Natural Resources Commission, is amended to  
6 read as follows:

7 (b)(1) Prior to the establishment of minimum stream flows, the  
8 Arkansas Natural Resources Commission shall notify by certified mail, return  
9 receipt requested, the Arkansas State Game and Fish Commission, the ~~Arkansas~~  
10 ~~Department~~ Division of Environmental Quality, and any other interested state  
11 boards and commissions.

12 (2) Within thirty (30) days of receipt of notice, the Arkansas  
13 State Game and Fish Commission and the ~~Arkansas Department~~ Division of  
14 Environmental Quality shall file written comments with the Arkansas Natural  
15 Resources Commission.

16  
17 SECTION 551. Arkansas Code § 15-22-224(b)(1)(B)(ii), concerning  
18 appointment of receiver, is amended to read as follows:

19 (ii) The Arkansas Water and Air Pollution Control  
20 Act, § 8-4-101 et seq., or rules promulgated in support of the Arkansas Water  
21 and Air Pollution Control Act, § 8-4-101 et seq., by the Arkansas Pollution  
22 Control and Ecology Commission or any successor or successors and enforced by  
23 the ~~Arkansas Department~~ Division of Environmental Quality or any successor or  
24 successors.

25  
26 SECTION 552. Arkansas Code § 15-22-224(g), concerning appointment of  
27 receiver, is amended to read as follows:

28 (g) Upon certification by the Department of Health that the public  
29 water system's or public sewer system's operation represents an immediate  
30 public health threat or certification by the ~~Arkansas Department~~ Division of  
31 Environmental Quality that the public sewer system is being operated in a  
32 manner to allow the discharge of pollutants in quantities unacceptable under  
33 applicable permits or state water quality standards and posing an imminent  
34 threat to public health, a court having jurisdiction in any proper action  
35 may, upon application of the Arkansas Natural Resources Commission,  
36 immediately appoint a receiver to take charge of the public water system or

1 public sewer system.

2  
3 SECTION 553. Arkansas Code § 15-22-906(c), concerning the groundwater  
4 protection program, is amended to read as follows:

5 (c)(1) This program shall not be inconsistent with nor shall it  
6 preempt or supersede any regulatory authority currently or in the future  
7 vested with the ~~Arkansas Department~~ Division of Environmental Quality, the  
8 State Plant Board, or the Department of Health.

9 (2) However, no permit or prior authorization from the ~~Arkansas~~  
10 ~~Department~~ Division of Environmental Quality, the State Plant Board, or the  
11 Department of Health shall be required to implement the provisions of this  
12 subchapter.

13  
14 SECTION 554. Arkansas Code § 15-22-1003(7)(E), concerning the  
15 definitions under the Arkansas Wetlands Mitigation Bank Act, is amended to  
16 read as follows:

17 (E) The ~~Arkansas Department~~ Division of Environmental  
18 Quality; and

19  
20 SECTION 555. Arkansas Code § 15-23-303(2), concerning the definition  
21 of "natural rivers" under the Arkansas Natural and Scenic Rivers Systems Act,  
22 is amended to read as follows:

23 (2) "Natural rivers" means those rivers or sections thereof that  
24 are generally free from man-made impoundments and may have primitive,  
25 undeveloped roads whose lands are essentially primitive, i.e., with a minimal  
26 amount of disturbance by people. The water shall have the use classification  
27 AA according to the 1976 Arkansas water quality inventory report by the  
28 Arkansas Department of Environmental Quality, now known as the Division of  
29 Environmental Quality;

30  
31 SECTION 556. Arkansas Code § 15-23-303(3), concerning the definition  
32 of "natural rivers" under the Arkansas Natural and Scenic Rivers Systems Act,  
33 is amended to read as follows:

34 (3) "Pastoral rivers" means rivers or sections thereof which are  
35 readily accessible, have some housing or other development near their  
36 shorelines, have preexisting impoundments that do not substantially alter the

1 character and quality of the stream, partially or predominantly flow through  
 2 agricultural areas, and have the use classification B according to the 1976  
 3 Arkansas water quality inventory report by the ~~department~~ Arkansas Department  
 4 of Environmental Quality, now known as the Division of Environmental Quality;  
 5

6 SECTION 557. Arkansas Code § 15-55-204 is amended to read as follows:

7 15-55-204. State Geologist.

8 (a) The State Geologist shall be appointed by and serve at the  
 9 pleasure of the Governor.

10 (b) He or she shall:

11 (1) Be charged with the duty of administering the provisions of  
 12 this subchapter and the rules, regulations, and orders established  
 13 thereunder;

14 (2) Be custodian of all property held in the name of the  
 15 Arkansas Geological Survey, and shall be, ex officio, with approval of the  
 16 Secretary of the Department of Energy and Environment, the disbursing agent  
 17 of all funds available for its use; ~~and~~

18 (3) Furnish bond to the state, with corporate surety thereon, in  
 19 the penal sum of ten thousand dollars (\$10,000), conditioned that he or she  
 20 will faithfully perform his or her duties of employment and properly account  
 21 for all funds received and disbursed by him or her. An additional disbursing  
 22 agent's bond shall not be required of the State Geologist. The bond so  
 23 furnished shall be filed with the Secretary of State, and an executed  
 24 counterpart thereof shall be filed with the Auditor of State; and

25 (4) Report to the Secretary of the Department of Energy and  
 26 Environment.

27 (c) The ~~commission~~ Arkansas Geological Survey, by resolution duly  
 28 adopted, may delegate to the State Geologist any of the powers or duties  
 29 vested in or imposed upon it by this subchapter, and the delegated powers and  
 30 duties may be exercised by the State Geologist in the name of the ~~commission~~  
 31 Arkansas Geological Survey.  
 32

33 SECTION 558. Arkansas Code § 15-55-205 is amended to read as follows:

34 15-55-205. Geological assistants and engineers.

35 (a) It shall be the duty of the State Geologist, by and with the  
 36 approval of the Arkansas Geological Survey and the Secretary of the

1 Department of Energy and Environment, to appoint trained geological  
 2 assistants, engineers, and others efficient in the arts and sciences as may  
 3 be necessary to completely carry on the investigations undertaken.

4 (b) The State Geologist, assistants, and engineers, are directed to go  
 5 into any mine or other place, where it is thought necessary by the State  
 6 Geologist to go, in executing the directions of the commission or the  
 7 Department of Energy and Environment.

8  
 9 SECTION 559. Arkansas Code § 15-57-202(a), concerning exemptions from  
 10 land reclamation laws, is amended to read as follows:

11 (a) The owners of lands on which are situated open-cut mining pits  
 12 that are not subject to the requirements of the Arkansas Open-Cut Land  
 13 Reclamation Act of 1977 [repealed] or any other land reclamation laws of this  
 14 state are authorized to make voluntary environmental or aesthetic  
 15 improvements to reclaim or improve the lands and the open-cut mining pits  
 16 thereon after first giving written notice of the proposed improvements to the  
 17 ~~Arkansas Department~~ Division of Environmental Quality.

18  
 19 SECTION 560. Arkansas Code § 15-57-203 is amended to read as follows:  
 20 15-57-203. Notice of proposed reclamation – Investigation.

21 (a) Any owner of such lands who wishes to make environmental or  
 22 aesthetic improvements to reclaim or improve the lands, as authorized in this  
 23 subchapter, shall file written notice thereof with the ~~Arkansas Department~~  
 24 Division of Environmental Quality before entering upon the improvements.

25 (b) The purpose of the notice shall be to advise the ~~department~~  
 26 division of the proposed reclamation or improvements to be made and to enable  
 27 the ~~department~~ division to make investigations necessary to assure that the  
 28 owner of the lands does not engage in activities in connection with any  
 29 reclamation or improvement project that would be in violation of the Arkansas  
 30 Open-Cut Land Reclamation Act, § 15-57-301 et seq.

31  
 32 SECTION 561. Arkansas Code § 15-57-303(4) and (5) concerning the  
 33 definition of "department" and "director" under the Arkansas Open-Cut Land  
 34 Reclamation Act, are repealed.

35 (4) ~~“Department” means the Arkansas Department of Environmental~~  
 36 ~~Quality or such department or other entity which may lawfully succeed to the~~

1 ~~powers and duties of the department;~~

2 ~~(5) "Director" means the executive head and active administrator~~  
3 ~~of the Arkansas Department of Environmental Quality;~~

4  
5 SECTION 562. Arkansas Code § 15-57-303(11), concerning the definition  
6 of "permit term" under the Arkansas Open-Cut Land Reclamation Act, is amended  
7 to read as follows:

8 (11) "Permit term" means the period of time beginning with the  
9 date upon which a permit is granted for open-cut mining of lands under the  
10 provisions of this subchapter and ending on the date requested by the  
11 operator and specified by the ~~department~~ division, though not to exceed five  
12 (5) years;

13  
14 SECTION 563. Arkansas Code § 15-57-304(a)(1), concerning violations of  
15 the Arkansas Open-Cut Land Reclamation Act, is amended to read as follows:

16 (1) Violate any provision of this subchapter or any rule,  
17 regulation, or order of the Arkansas Pollution Control and Ecology Commission  
18 or the ~~Arkansas Department~~ Division of Environmental Quality issued pursuant  
19 to this subchapter;

20  
21 SECTION 564. Arkansas Code § 15-57-304(a)(5), concerning violations of  
22 the Arkansas Open-Cut Land Reclamation Act, is amended to read as follows:

23 (5) Willfully resist, prevent, impede, or interfere with the  
24 Director of the ~~Arkansas Department~~ Division of Environmental Quality or any  
25 of his or her authorized representatives in the performance of duties  
26 pursuant to this subchapter.

27  
28 SECTION 565. The introductory language of Arkansas Code § 15-57-  
29 305(a), concerning civil and administrative penalties regarding the Arkansas  
30 Open-Cut Land Reclamation Act, is amended to read as follows:

31 (a) Civil Penalties. The ~~Arkansas Department~~ Division of  
32 Environmental Quality is authorized to institute a civil action in any court  
33 of competent jurisdiction to accomplish any or all of the following:

34  
35 SECTION 566. Arkansas Code § 15-57-305(a)(3), concerning civil and  
36 administrative penalties regarding the Arkansas Open-Cut Land Reclamation

1 Act, is amended to read as follows:

2 (3) To recover all costs, expenses, and damages to the  
3 ~~department~~ division or any other agency of the state in enforcing the  
4 provisions of this subchapter and reclaiming affected land;

5

6 SECTION 567. The introductory language of Arkansas Code § 15-57-  
7 305(b)(1), concerning civil and administrative penalties regarding the  
8 Arkansas Open-Cut Land Reclamation Act, is amended to read as follows:

9 (1) Any person who engages in open-cut mining without first  
10 securing a permit as required by this subchapter or who fails to reclaim  
11 affected lands in accordance with this subchapter or who violates any  
12 provision of this or any order, regulation, rule, permit, or reclamation plan  
13 issued pursuant thereto, may be assessed an administrative civil penalty by  
14 the ~~department~~ division not to exceed:

15

16 SECTION 568. Arkansas Code § 15-57-306 is amended to read as follows:  
17 15-57-306. Administration.

18 The ~~Arkansas Department~~ Division of Environmental Quality through the  
19 Director of the ~~Arkansas Department~~ Division of Environmental Quality, and  
20 any representatives designated by the director, shall administer and enforce  
21 the provisions of this subchapter, except for those provisions specifically  
22 designated to the Arkansas Pollution Control and Ecology Commission.

23

24 SECTION 569. Arkansas Code § 15-57-308 is amended to read as follows:  
25 15-57-308. Technical and financial assistance.

26 The ~~Arkansas Department~~ Division of Environmental Quality shall have  
27 the authority to cooperate with and receive technical and financial  
28 assistance from the United States, or any department, agency, or officer  
29 thereof, for any purposes relating to the reclamation of affected lands.

30

31 SECTION 570. Arkansas Code § 15-57-309 is amended to read as follows:  
32 15-57-309. Entry on lands for inspection.

33 The ~~Arkansas Department~~ Division of Environmental Quality or its  
34 designated representatives may enter upon the lands affected by open-cut  
35 mining at all reasonable times for the purpose of determining compliance with  
36 the provisions of this subchapter.



1  
2 SECTION 571. Arkansas Code § 15-57-310(a), concerning the necessity of  
3 a permit and effective date of the Arkansas Open-Cut Land Reclamation Act, is  
4 amended to read as follows:

5 (a) It shall be unlawful for any operator to engage in open-cut mining  
6 without first obtaining from the ~~Arkansas Department~~ Division of  
7 Environmental Quality a permit to do so in the form required by the ~~Arkansas~~  
8 ~~Department~~ Division of Environmental Quality.

9  
10 SECTION 572. Arkansas Code § 15-57-310(g), concerning the necessity of  
11 a permit and effective date of the Arkansas Open-Cut Land Reclamation Act, is  
12 amended to read as follows:

13 (g)(1) The ~~Arkansas Department~~ Division of Environmental Quality shall  
14 develop regulations to implement the provisions of this chapter.

15 (2) The ~~Arkansas Department~~ Division of Environmental Quality  
16 shall develop documentation that will guide an operator through the  
17 permitting process.

18  
19 SECTION 573. Arkansas Code § 15-57-311(a), concerning an application  
20 for a permit and fees and bonds under the Arkansas Open-Cut Land Reclamation  
21 Act, is amended to read as follows:

22 (a) Any person desiring to engage in open-cut mining shall make  
23 written application to the ~~Arkansas Department~~ Division of Environmental  
24 Quality for a permit. The application shall be made upon a form furnished by  
25 the ~~department~~ division.

26  
27 SECTION 574. Arkansas Code § 15-57-311(c), concerning an application  
28 for a permit and fees and bonds under the Arkansas Open-Cut Land Reclamation  
29 Act, is amended to read as follows:

30 (c) The perimeter of the area to be permitted must be clearly marked  
31 on the ground at all times until such time as the permitted area is released  
32 from reclamation liability by the ~~department~~ division.

33  
34 SECTION 575. Arkansas Code § 15-57-311(e), concerning an application  
35 for a permit and fees and bonds under the Arkansas Open-Cut Land Reclamation  
36 Act, is amended to read as follows:

1 (e) The application for a mining permit shall be accompanied by a bond  
2 or substituted security for the affected or the proposed affected area in  
3 favor of the State of Arkansas through the ~~department~~ division, to be  
4 effective from and after the time that the operator has affected land in the  
5 process of open-cut mining or after the time that a permit is granted and  
6 which shall meet the requirements of § 15-57-316.

7  
8 SECTION 576. Arkansas Code § 15-57-311(g), concerning an application  
9 for a permit and fees and bonds under the Arkansas Open-Cut Land Reclamation  
10 Act, is amended to read as follows:

11 (g) The ~~department~~ division may approve a permit for mining and  
12 reclaiming the permitted area in increments, provided that the permit  
13 application contains an acceptable incremental mining plan and is accompanied  
14 by a bond or substituted security to cover reclamation of each successive  
15 increment prior to affecting it.

16  
17 SECTION 577. The introductory language of Arkansas Code § 15-57-  
18 311(j)(1)(A), concerning an application for a permit and fees and bonds under  
19 the Arkansas Open-Cut Land Reclamation Act, is amended to read as follows:

20 (j)(1)(A) After notice and opportunity for a public hearing, the  
21 ~~department~~ division may develop and issue general permits for any category of  
22 activities involving open-cut mining operations if the ~~department~~ division  
23 determines that the activities in a category:

24  
25 SECTION 578. Arkansas Code § 15-57-311(j)(1)(B), concerning an  
26 application for a permit and fees and bonds under the Arkansas Open-Cut Land  
27 Reclamation Act, is amended to read as follows:

28 (B) To qualify for inclusion under the general permit,  
29 applicants shall submit a notice of intent and supporting documentation on  
30 forms developed by the ~~department~~ division.

31  
32 SECTION 579. Arkansas Code § 15-57-311(j)(2), concerning an  
33 application for a permit and fees and bonds under the Arkansas Open-Cut Land  
34 Reclamation Act, is amended to read as follows:

35 (2) The Director of the ~~Arkansas Department~~ Division of  
36 Environmental Quality at his or her discretion may require an applicant to

1 seek coverage under an individual permit.

2  
3 SECTION 580. The introductory language of Arkansas Code § 15-57-  
4 311(j)(3)(B), concerning an application for a permit and fees and bonds under  
5 the Arkansas Open-Cut Land Reclamation Act, is amended to read as follows:

6 (B) The general permit may be revoked or modified by the  
7 ~~department~~ division if after opportunity for a public hearing the ~~department~~  
8 division determines that the activities authorized by the general permit:

9  
10 SECTION 581. Arkansas Code § 15-57-313 is amended to read as follows:

11 15-57-313. Withdrawal of land covered by permit.

12 An operator may withdraw any land covered by a permit, except affected  
13 land, by notifying the ~~Arkansas Department~~ Division of Environmental Quality,  
14 in which case the penalty of the bond or substituted security filed by the  
15 operator pursuant to the provisions of this subchapter shall be reduced  
16 proportionately.

17  
18 SECTION 582. Arkansas Code § 15-57-314 is amended to read as follows:

19 15-57-314. Extension of permit.

20 Where the area for which a permit is in effect is not mined or where  
21 open-cut mining operations have not been completed during the permit term,  
22 the permit as to such area may be extended by the ~~Arkansas Department~~  
23 Division of Environmental Quality on the terms and conditions required by the  
24 ~~department~~ division.

25  
26 SECTION 583. Arkansas Code § 15-57-315(1)(A)(ii)(b), concerning the  
27 duties of an operator in an open-cut mine, is amended to read as follows:

28 (b) The ~~Arkansas Department~~ Division of  
29 Environmental Quality may approve a steeper final slope where the original  
30 contour of the affected land was steeper than the one (1) to three (3) ratio  
31 if the operator can assure, to the satisfaction of the ~~department~~ division,  
32 the integrity of the final contour.

33  
34 SECTION 584. Arkansas Code § 15-57-315(1)(B), concerning the duties of  
35 an operator in an open-cut mine, is amended to read as follows:

36 (B) The Director of the ~~Arkansas Department~~ Division of

1 Environmental Quality shall develop regulations which will allow the  
2 ~~department~~ division the discretion to permit deviations from certain  
3 reclamation standards, including final slope steepness requirements within  
4 this subdivision (1), because of unique mining situations, provided the  
5 deviations are consistent with the declaration of policy in this subchapter;  
6

7 SECTION 585. Arkansas Code § 15-57-315(2)(B)(ii), concerning the  
8 duties of an operator in an open-cut mine, is amended to read as follows:

9 (ii) However, where water runoff from outside the  
10 affected area into the lake has a pH factor of less than six (6) or greater  
11 than nine (9) or in order to allow the lake to more closely match the natural  
12 environment, the ~~department~~ division, in its discretion, may allow a  
13 deviation in pH levels;  
14

15 SECTION 586. Arkansas Code § 15-57-315(3), concerning the duties of an  
16 operator in an open-cut mine, is amended to read as follows:

17 (3) On all affected land which is to be reforested, the operator  
18 shall construct reasonable fire lanes or access roads of at least ten feet  
19 (10') in width through the land unless this requirement is waived by the  
20 ~~department~~ division;  
21

22 SECTION 587. Arkansas Code § 15-57-315(4)(A), concerning the duties of  
23 an operator in an open-cut mine, is amended to read as follows:

24 (4)(A) Requirements for both establishment and maintenance of  
25 the vegetative cover shall be established by the ~~department~~ division, and the  
26 operator shall comply with the requirements or use other equally effective  
27 means.  
28

29 SECTION 588. Arkansas Code § 15-57-315(4)(C), concerning the duties of  
30 an operator in an open-cut mine, is amended to read as follows:

31 (C)(i) Laboratory soil tests and recommendations shall be  
32 obtained from the University of Arkansas Cooperative Extension Service or any  
33 other public or private organization or person approved by the ~~department~~  
34 division.

35 (ii) The operator shall furnish copies of the soil  
36 sample report and recommendations to the ~~department~~ division.

1  
2 SECTION 589. Arkansas Code § 15-57-315(5)(B), concerning the duties of  
3 an operator in an open-cut mine, is amended to read as follows:

4 (B)(i) For the ~~department~~ division to approve a variance  
5 on the fifty-foot buffer zone, there must be an agreement between the  
6 affected property owner or right-of-way holder and the operator.

7 (ii) Proof of such an agreement must be provided to  
8 the ~~department~~ division.

9  
10 SECTION 590. Arkansas Code § 15-57-315(6) and (7), concerning the  
11 duties of an operator in an open-cut mine, are amended to read as follows:

12 (6)(A) Whenever the exposed face of mined seams that contain  
13 acid-forming materials is not covered by water or by permanent water  
14 impoundment, the operator who mined the seams shall cover the exposed face of  
15 the seams with earth or spoil materials to a depth of not less than three  
16 feet (3') upon receiving approval from the ~~department~~ division.

17 (B) Alternatively, the ~~department~~ division may approve any  
18 other course or conduct proposed by the operator which will assure protection  
19 of the seams from atmospheric exposure, minimize leaching action, or  
20 otherwise conform with water pollution control criteria to prevent formation  
21 of acid mine water or discharge mine water;

22 (7)(A) The operator shall submit to the ~~department~~ division no  
23 later than June 1 of each year of the permit term:

24 (i) A map in a form acceptable to the ~~department~~  
25 division showing the location of the affected areas by section, township,  
26 range, and county with other legal description as will identify the affected  
27 land during the permit term upon which the operator has completed mining  
28 operations;

29 (ii) The extent of completed reclamation as required  
30 under § 15-57-311(d); and

31 (iii) A legend upon the map showing the number of  
32 acres of affected land.

33 (B) The annual report shall include the amount of material  
34 mined during each twelve-month period;

35  
36 SECTION 591. Arkansas Code § 15-57-315(8)(A), concerning the duties of

1 an operator in an open-cut mine, is amended to read as follows:

2 (8)(A) The ~~department's~~ division's approval of the operator's  
3 reclamation plan may be based upon the advice and technical assistance of the  
4 Arkansas Natural Resources Commission, the Arkansas State Game and Fish  
5 Commission, the State Forester, the Arkansas Geological Survey, and other  
6 agencies or persons having experience in foresting and reclaiming open-cut  
7 mined lands with forest or agronomic or horticultural species, based upon  
8 scientific knowledge from research into reclaiming and utilizing forest and  
9 agronomic species on open-cut mined lands.

10  
11 SECTION 592. Arkansas Code § 15-57-315(9)(A)(ii), concerning the  
12 duties of an operator in an open-cut mine, is amended to read as follows:

13 (ii) Where natural weathering and leaching of  
14 affected land fails to support plant growth at the end of the reclamation  
15 period as required under § 15-57-311(d), the ~~department~~ division, at the  
16 request of the operator, may approve a permit extension from year-to-year  
17 from the termination of the permit on the permitted area.

18  
19 SECTION 593. Arkansas Code § 15-57-315(9)(B), concerning the duties of  
20 an operator in an open-cut mine, is amended to read as follows:

21 (B) In the event that the operator does not comply with  
22 its schedule of reclamation or extensions granted within a reasonable period  
23 of time, to be determined by the ~~department~~ division, the bond or substituted  
24 security of affected land not satisfactorily reclaimed shall be forfeited;

25  
26 SECTION 594. Arkansas Code § 15-57-315(10) and (11), concerning the  
27 duties of an operator in an open-cut mine, are amended to read as follows:

28 (10) In the event that the operator's reclamation plan is found  
29 impracticable by the operator, upon the application of the operator, the  
30 ~~department~~ division, in its discretion, may allow the modification of the  
31 reclamation plan, provided that the modified plan will carry out the purposes  
32 of this subchapter;

33 (11) All mine spoil generated by the operator shall be disposed  
34 of in a manner approved by the ~~department~~ division and designed to control  
35 siltation, erosion, or other damage to streams and natural watercourses, as  
36 best allowed by the soil conditions of the permitted area;

1  
2 SECTION 595. Arkansas Code § 15-57-315(14), concerning the duties of  
3 an operator in an open-cut mine, is amended to read as follows:

4 (14) Upon approval from the ~~department~~ division, stockpiles of  
5 processed materials may be left without being reclaimed if there is a  
6 likelihood that there will be a market for the material in the future and  
7 that there will be no form of pollution from the stockpiles remaining on or  
8 leaving the property.

9  
10 SECTION 596. Arkansas Code § 15-57-316 is amended to read as follows:

11 15-57-316. Bond of operator.

12 (a)(1)(A) Any bond provided in this subchapter to be filed with the  
13 ~~Arkansas Department~~ Division of Environmental Quality by the operator shall  
14 be in such form as the ~~department~~ division shall prescribe, payable to the  
15 State of Arkansas through the ~~department~~ division, conditioned that the  
16 operator shall faithfully perform all requirements of this subchapter and  
17 comply with all rules, regulations, and orders made in accordance with the  
18 provisions of this subchapter.

19 (B) The bond shall be signed by the operator and a good  
20 and sufficient corporate surety authorized to do business in the United  
21 States.

22 (2) The penalty of the bond shall be in an amount equal to the  
23 estimated cost of reclamation, as required in § 15-57-311(d).

24 (3)(A) In the event that the ~~department~~ division finds the cost  
25 of reclamation to be an underestimate, the ~~department~~ division shall make use  
26 of available expertise to establish the estimated cost of reclamation, which  
27 shall be the amount of the bond.

28 (B) In the event of a disagreement concerning the estimate  
29 of the proper amount of the bond, the ~~department~~ division may retain  
30 independent expertise as is necessary to establish the amount of the bond.

31 (4) The Arkansas Pollution Control and Ecology Commission shall  
32 promulgate regulations concerning bonds and substituted security which will  
33 attempt to ensure that small operators are not precluded from development of  
34 mineral resources as a result of high bond amounts, but which will provide  
35 reasonable security.

36 (b)(1) The ~~department~~ division may accept cash, securities, or other

1 collateral, including, but not limited to, letters of credit and mortgages on  
2 real property provided by the operator in an amount equal to that of the  
3 required bond as provided in subsection (a) of this section.

4 (2) The bond or substituted security may be increased or reduced  
5 from time to time as provided in this subchapter.

6 (3) The bond or substituted security shall be in effect and  
7 subject to forfeiture in accordance with this subchapter from and after the  
8 time that the operator has affected land in the process of open-cut mining or  
9 after the time a permit is granted by the ~~department~~ division until the  
10 affected area has been reclaimed, approved, and released.

11 (c)(1) Any bond or substituted security shall not be cancelled by the  
12 surety unless it has given no less than ninety (90) days' notice of the  
13 cancellation to the ~~department~~ division.

14 (2) In no event shall a bond be cancelled on an area that at the  
15 time of cancellation has become affected land under the provisions of this  
16 subchapter.

17 (d)(1) If the license to do business of any surety upon a bond or  
18 substituted security filed with the ~~department~~ division pursuant to this  
19 subchapter shall be suspended or revoked, the operator, within thirty (30)  
20 days after receiving notice of the revocation, shall substitute for the  
21 surety a licensed corporate surety.

22 (2) Upon the failure of the operator to make substitution of the  
23 surety, the ~~department~~ division shall suspend the permit of the operator  
24 until the substitution is made.

25 (e)(1) The ~~department~~ division shall give written notice to the  
26 operator of any violation of this subchapter or noncompliance with any of the  
27 rules, regulations, or orders promulgated under this subchapter.

28 (2) If corrective measures determined by the ~~department~~  
29 division, including, but not limited to, increase of the bond or substituted  
30 security, are not commenced or agreed to by the operator within a reasonable  
31 period of time to be determined by the ~~department~~ division, the ~~department~~  
32 division may terminate the permit of the operator and forfeit the bond or  
33 substituted security.

34 (3) If a permit has not been issued but a bond has been posted  
35 during the application process and this process will not be completed and  
36 there is affected land at the site, the ~~department~~ division may forfeit the



1 bond or substituted security as provided in § 15-57-317.

2 (f) The ~~department~~ division may reclaim any affected land for which a  
3 bond has been forfeited.

4 (g)(1) Whenever an operator shall have completed all requirements  
5 under the provisions of this subchapter as to any affected land, it shall so  
6 notify the ~~department~~ division.

7 (2) If the ~~department~~ division determines that the operator has  
8 completed reclamation requirements and achieved results appropriate to the  
9 use for which the affected land was reclaimed, the ~~department~~ division shall  
10 release the operator from further obligations regarding the affected land and  
11 the penalty of the bond or substituted security shall be reduced accordingly.

12 (h)(1) Upon partial completion of reclamation, the operator may submit  
13 a written request to the ~~department~~ division for the purpose of  
14 proportionately reducing the amount of the bond or substituted security upon  
15 affected lands.

16 (2) If the ~~department~~ division determines that proper  
17 reclamation has been accomplished under the provisions of this subchapter on  
18 an area less than the total area of the affected area, the ~~department~~  
19 division shall proportionately reduce the amount of the bond or substituted  
20 security.

21 (i) No operator shall be eligible to receive a new or renewed permit  
22 who has had a permit revoked, bond forfeited, or who has outstanding  
23 substantial unmitigated violations of this subchapter, including failure to  
24 reclaim, unless the ~~department~~ division finds upon review a demonstrable  
25 change of circumstances justifying an exception to these prohibitions.

26 (j) Liability under the bond or substituted security shall be for the  
27 duration of the open-cut mining operation and for that period required to  
28 establish successful reclamation of the affected area.

29 (k) Nothing contained herein shall be deemed to preclude the right of  
30 the ~~department~~ division to recover the actual cost of reclamation over and  
31 above the amount of bond.

32  
33 SECTION 597. Arkansas Code § 15-57-317 is amended to read as follows:  
34 15-57-317. Bond forfeiture proceedings.

35 (a) The ~~Arkansas Department~~ Division of Environmental Quality may  
36 institute proceedings to have the bond or substituted security of the

1 operator forfeited for any of the following reasons, including, but not  
2 limited to:

3 (1) Failure to abate any violation of this subchapter or any  
4 rule or regulation promulgated thereunder;

5 (2) Failure to comply with the terms and conditions of the open-  
6 cut mining permit or the bond;

7 (3) Failure to comply with any order of the ~~department~~ division;

8 (4) Failure to reclaim any affected land in accordance with this  
9 subchapter; or

10 (5) Insolvency, bankruptcy, or receivership of the operator.

11 (b) The ~~department~~ division shall notify the operator in writing of  
12 the bond forfeiture, and the operator shall be given an opportunity for a  
13 hearing as provided in this subchapter.

14  
15 SECTION 598. Arkansas Code § 15-57-318 is amended to read as follows:  
16 15-57-318. Registration of existing open-cut mines.

17 The ~~Arkansas Department~~ Division of Environmental Quality shall require  
18 registration of all existing unpermitted open-cut mines in which mining  
19 operations are not being conducted.

20  
21 SECTION 599. Arkansas Code § 15-57-319 is amended to read as follows:  
22 15-57-319. Land Reclamation Fund – Permit fee.

23 (a) A Land Reclamation Fund is established on the books of the  
24 Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State.  
25 The fund shall consist of civil penalty and bond forfeiture amounts, gifts,  
26 grants, donations, and other funds as may be made available by the General  
27 Assembly, including all interest earned upon moneys deposited into the fund.  
28 The ~~Arkansas Department~~ Division of Environmental Quality shall use the funds  
29 to accomplish reclamation of affected lands.

30 (b) All fees and any moneys collected as reimbursement for expenses,  
31 costs, and damages to the state under the provisions of this subchapter shall  
32 be deposited in the general revenue fund of the ~~department~~ division and shall  
33 be used to defray the administrative and enforcement costs of this  
34 subchapter.

35 (c) The Arkansas Pollution Control and Ecology Commission may by  
36 regulation prescribe an annual permit fee on affected lands.

1  
2 SECTION 600. Arkansas Code § 15-57-320(e)(2) and (3), concerning  
3 exemptions from the Arkansas Open-Cut Land Reclamation Act, are amended to  
4 read as follows:

5 (2) In the event that authorization pursuant to section 404 of  
6 the Federal Clean Water Act is determined by the United States Army Corps of  
7 Engineers not to be required for a specific flood control or bank  
8 stabilization project, the ~~Arkansas Department~~ Division of Environmental  
9 Quality will review the proposed project plan using the Section 401 water  
10 quality certification criteria.

11 (3) The ~~department~~ division shall provide the necessary  
12 authorization for the project once it has been determined that the activity  
13 will not adversely affect water quality.  
14

15 SECTION 601. Arkansas Code § 15-57-320(f)(1), concerning exemptions  
16 from the Arkansas Open-Cut Land Reclamation Act, is amended to read as  
17 follows:

18 (f)(1) All stream gravel mining operations on streams designated as  
19 extraordinary resource waters after January 1, 1995, may continue to operate  
20 under a permit issued by the ~~department~~ division for a period of two (2)  
21 years from the date of the designation.  
22

23 SECTION 602. Arkansas Code § 15-57-402(5)-(7), concerning the  
24 definition of "default", "department", and "director" under the Arkansas  
25 Quarry Operation, Reclamation, and Safe Closure Act, are amended to read as  
26 follows:

27 (5) "Default" means an operation that has uncorrected violations  
28 of the requirements of this subchapter which allows the ~~Arkansas Department~~  
29 Division of Environmental Quality to forfeit the bond to have the site  
30 reclaimed as per the reclamation plan;

31 (6) "Department" means the ~~Arkansas Department~~ Division of  
32 Environmental Quality or such ~~department~~ division or other entity which may  
33 lawfully succeed to the powers and duties of the ~~department~~ division;

34 (7) "Director" means the executive head and active administrator  
35 of the ~~Arkansas Department~~ Division of Environmental Quality;  
36

1 SECTION 603. Arkansas Code § 15-57-402(9), concerning the definition  
2 of "fee" under the Arkansas Quarry Operation, Reclamation, and Safe Closure  
3 Act, is amended to read as follows:

4 (9) "Fee" means the notification or annual operating payment  
5 made by the operator to the ~~department~~ division. The amount cannot be changed  
6 except by legislative action. This fee will be payable on or before July 1  
7 for all operating quarries in the current calendar year;

8  
9 SECTION 604. Arkansas Code § 15-57-402(14), concerning the definition  
10 of "notification of intent" under the Arkansas Quarry Operation, Reclamation,  
11 and Safe Closure Act, is amended to read as follows:

12 (14) "Notification of intent" is the operator's proper  
13 notification to the ~~department~~ division of the operator's intent to open a  
14 quarry, to temporarily close a quarry, to reactivate a quarry, and to shut  
15 down an exhausted quarry;

16  
17 SECTION 605. Arkansas Code § 15-57-402(19), concerning the definition  
18 of "reclamation plan" under the Arkansas Quarry Operation, Reclamation, and  
19 Safe Closure Act, is amended to read as follows:

20 (19) "Reclamation plan" is a plan presented to the ~~department~~  
21 division by an operator detailing the reclamation and revegetation of lands  
22 affected by quarrying both contemporaneously and after the quarry is  
23 exhausted, and required by this subchapter;

24  
25 SECTION 606. Arkansas Code § 15-57-403 is amended to read as follows:

26 15-57-403. Notification – Filing – Public notice and response.

27 (a) It shall be unlawful for any operator to engage in a quarrying  
28 operation without first submitting to the ~~Arkansas Department~~ Division of  
29 Environmental Quality a "notification of intent to quarry" or a "notification  
30 of reactivated quarry" in accordance with this subchapter. The submittal,  
31 with returned receipt, shall enable the operator to begin or continue  
32 quarrying as long as the required reclamation bond is in force and proof of  
33 public notification is included. An operator shall be deemed to be quarrying  
34 from the time he or she begins start-up until reclamation is completed at the  
35 exhausted quarry.

36 (b) Only new quarries or any land purchased or leased for a quarry

1 after January 1, 1997, will be subject to this subchapter.

2 (c) There will be no requirements for a "notification of intent" to be  
3 filed with the ~~department~~ division for temporarily closed or exhausted  
4 quarries in existence prior to January 1, 1998. These quarries will be exempt  
5 from the requirements of this subchapter unless reactivated.

6 (d) A new notification of intent to quarry shall be required if a  
7 change in the majority ownership of an operator occurs.

8 (e) Representatives of the ~~department~~ division may make regular site  
9 visits to quarry operations, as necessary, to determine compliance with the  
10 requirements of the operator's notification. On these visits the operator  
11 will make his or her quarry operation accessible to the ~~department~~ division.

12 (f) Upon receipt of notifications of intent, the ~~department~~ division  
13 will have ninety (90) days to respond to the operator by certified mail to  
14 errors or omissions, or both, in the notifications.

15 (g) On completion of a notification, the ~~department~~ division will  
16 issue the operator a notice which will be posted on quarry premises at all  
17 times when the quarry is in operation and which will state:

18 "Name of company has completed the requirements, as set out by the 'Arkansas  
19 Quarry Operation, Reclamation and Safe Closure Act' of 1997, and has the  
20 unconditional authorization to quarry at this site, so long as the quarry is  
21 in compliance with all laws and regulations for up to five (5) years."

22 (h) The ~~department~~ division, upon finding the operator to be out of  
23 compliance with the requirements of his or her "notification" may issue  
24 warnings, citations, and notices of default to the operator.

25 (i) All filings and other communication will be by certified mail.

26 (j)(1)(A) An operator will give notice to the public in a local  
27 newspaper of general circulation that he or she intends to open or reactivate  
28 a quarry.

29 (B)(i) The notification will be part of an operator's  
30 intent and will be published in the newspaper at the same time the intent is  
31 filed with the ~~department~~ division.

32 (ii) Proof of publication shall be provided to the  
33 ~~department~~ division in the operator's notice of intent.

34 (C) The notification will indicate the approximate  
35 location of the quarry using section, township, and range plus a road address  
36 or identifiable local landmarks when possible, the date of start up and the

1 date the operator plans to temporarily close, if applicable, as well as the  
2 operator's name, address, phone number, and contact person.

3 (D) The notification shall state that interested parties  
4 may contact the ~~department~~ division for further information and that they  
5 have ten (10) days after publication of the notice to notify the ~~department~~  
6 division of any request for a public meeting.

7 (2)(A) If the ~~department~~ division receives at least five (5)  
8 requests for a public meeting from owners of property within one-half ( $\frac{1}{2}$ )  
9 mile of the quarry, it may require that the operator hold a public meeting.

10 (B) This public meeting shall be held within two (2) weeks  
11 after the expiration of the ten-day public notice period.

12 (C) This public meeting shall be held in a location near  
13 the proposed quarry to allow the public to discuss their interests with the  
14 operator prior to start-up.

15 (3)(A) The operator will keep responses from the public on file  
16 for two (2) years.

17 (B) The ~~department~~ division will forward responses it  
18 receives to the operator.

19 (4) The operator will keep a record of all action taken  
20 resulting from public responses for two (2) years, notifying the ~~department~~  
21 division of each action.

22  
23 SECTION 607. Arkansas Code § 15-57-404(a)(1)-(5), concerning  
24 notification of intent to quarry, are amended to read as follows:

25 (a)(1) Except for operators of quarries excluded by § 15-57-403(b),  
26 any operator desiring to engage in quarrying shall complete a notification of  
27 intent to quarry which when submitted to the ~~Arkansas Department~~ Division of  
28 Environmental Quality by certified mail will entitle said operator to conduct  
29 quarry operations.

30 (2)(A) For all active quarries, as of January 1, 1998, a  
31 "notification of intent" must be on file or in process at the ~~department~~  
32 division.

33 (B) For all new quarries to be opened after January 1,  
34 1998, a notification of intent must be on file or in process at the  
35 ~~department~~ division before the operator may begin quarry operations.

36 (3) The notification shall be accompanied by the payment of a

1 fee of two hundred fifty dollars (\$250).

2 (4) The submittal shall be an agreement between the operator and  
3 the ~~department~~ division.

4 (5) The operator shall pay an annual fee to the ~~department~~  
5 division in the amount of twenty-five dollars (\$25.00) per acre of affected  
6 land, not to exceed one thousand dollars (\$1,000) per quarry.

7  
8 SECTION 608. Arkansas Code § 15-57-404(c) and (d), concerning  
9 notification of intent to quarry, are amended to read as follows:

10 (c) All operators will have sixty (60) days to correct any errors or  
11 omissions to a notification of intent if notified by the ~~department~~ division  
12 that a notification of intent is incomplete.

13 (d) A fine of not more than one hundred dollars (\$100) per day, per  
14 citation, may be levied against an operator whose notification of intent is  
15 not completed and on file in the ~~department~~ division within sixty (60) days  
16 after receipt of notice by the ~~department~~ division of errors and omissions in  
17 the first filing. The maximum fine is five thousand dollars (\$5,000).

18  
19 SECTION 609. The introductory language of Arkansas Code § 15-57-  
20 405(a), concerning the notification of a temporarily closed quarry, is  
21 amended to read as follows:

22 (a) Quarry sites in which operations are only occasionally conducted  
23 and in which the operator anticipates future quarry activity can be shut down  
24 on a temporary basis. If so, the operator will file a notification of  
25 temporarily closed quarry with the ~~Arkansas Department~~ Division of  
26 Environmental Quality, within thirty (30) days after an operation is closed.  
27 Full reclamation will not be required until no further additional quarrying  
28 is anticipated or the quarry is exhausted. All operational safeguards, as  
29 described in this subchapter, will remain in place as required until the  
30 quarry is exhausted. The notification of temporarily closed quarry will  
31 contain the following:

32  
33 SECTION 610. Arkansas Code § 15-57-405(b) and (c), concerning the  
34 notification of a temporarily closed quarry, are amended to read as follows:

35 (b) When an operator closes a quarry and fails to file a notification  
36 of temporarily closed quarry with the ~~department~~ division within sixty (60)

1 days, the ~~department~~ division may levy a fine of not more than one hundred  
2 dollars (\$100) per day by citation until said notification is received. The  
3 maximum fine is five thousand dollars (\$5,000).

4 (c) If a notification of temporarily closed quarry is not received  
5 within ninety (90) days of the issuance of the citation, the ~~department~~  
6 division may declare that the quarry is in default and require the operator  
7 to reclaim the site as per the bonding and reclamation requirements or the  
8 ~~department~~ division may forfeit the bond and issue a contract to have the  
9 site reclaimed as per the reclamation requirements.

10  
11 SECTION 611. Arkansas Code § 15-57-406 is amended to read as follows:  
12 15-57-406. Notification of reactivated quarry.

13 Prior to resuming operation in a temporarily closed quarry, an operator  
14 will notify the ~~Arkansas Department~~ Division of Environmental Quality by  
15 certified mail with a notification of reactivated quarry. This notification  
16 will consist of the resubmittal of the notification of intent along with any  
17 modifications required, necessary by changed conditions at the quarry site.

18  
19 SECTION 612. Arkansas Code § 15-57-407(a), concerning the refiling of  
20 a notification, is amended to read as follows:

21 (a) Every five (5) years all notifications of intent to quarry and of  
22 temporarily closed quarry must be refiled with the ~~Arkansas Department~~  
23 Division of Environmental Quality by certified mail on or before the  
24 operator's anniversary date, with any modifications made necessary by changed  
25 conditions in the quarry site, such as changes in the affected acreage,  
26 majority ownership of the operator, changes in public roads and manmade  
27 structures adjacent to the quarry site, or new technology.

28  
29 SECTION 613. The introductory language of Arkansas Code § 15-57-  
30 408(a), concerning the notification of an exhausted quarry, is amended to  
31 read as follows:

32 (a) When a quarry becomes exhausted, the operator will notify the  
33 ~~Arkansas Department~~ Division of Environmental Quality by registered mail that  
34 the quarry is an exhausted quarry. This notification will contain the  
35 following:



1 SECTION 614. Arkansas Code § 15-57-408(b)-(d), concerning the  
2 notification of an exhausted quarry, are amended to read as follows:

3 (b) If the operator fails to notify the ~~department~~ division of this  
4 change of status, the ~~department~~ division will notify the operator by  
5 citation. The operator will then have sixty (60) days to file said  
6 notification and commence with plans to reclaim quarry site as per the  
7 requirements of this subchapter.

8 (c) If the operator fails to file notification within the required  
9 sixty (60) days, the ~~department~~ division may levy a fine of one hundred  
10 dollars (\$100) per day by citation to the operator until notification is  
11 received by the ~~department~~ division. The maximum fine is five thousand  
12 dollars (\$5,000).

13 (d) If the operator fails to notify the ~~department~~ division within  
14 sixty (60) days and the fine is in effect, then the ~~department~~ division may  
15 declare the operator in default and order the operator to begin reclamation  
16 as required or the ~~department~~ division may forfeit bond and issue a contract  
17 to have the site reclaimed as per the reclamation plan.

18  
19 SECTION 615. Arkansas Code § 15-57-409(a), concerning the reclamation  
20 of land at an exhausted quarry site, is amended to read as follows:

21 (a) When the quarry is exhausted, the planned reclamation of all  
22 affected lands at the quarry site will be completed by the operator, his or  
23 her subcontractor, or by the ~~Arkansas Department~~ Division of Environmental  
24 Quality once the bond has been forfeited.

25  
26 SECTION 616. Arkansas Code § 15-57-409(b)(2), concerning the  
27 reclamation of land at an exhausted quarry site, is amended to read as  
28 follows:

29 (2) All equipment, tools, manmade structures, and debris will be  
30 removed from affected lands or disposed of on property in a safe manner by  
31 mutual agreement between the operator and the landowner. The agreement will  
32 be on file at the operator's offices and sent to the ~~department~~ division with  
33 notification of exhausted quarry.

34  
35 SECTION 617. Arkansas Code § 15-57-409(b)(9) and (10), concerning the  
36 reclamation of land at an exhausted quarry site, are amended to read as

1 follows:

2 (9) Quarry site reclamation must be completed through the first  
3 seeding within one (1) year for quarry sites of less than fifty (50) acres,  
4 within two (2) years for quarry sites of more than fifty (50) acres and less  
5 than one hundred (100) acres, and within three (3) years for quarry sites of  
6 more than one hundred (100) acres and less than two hundred (200) acres. This  
7 time requirement for sites larger than two hundred (200) acres may be  
8 modified, at the discretion of the ~~department~~ division, upon agreement with  
9 the operator.

10 (10) If an operator fails to begin reclamation during the first  
11 six (6) months after a quarry is exhausted, the ~~department~~ division will  
12 notify the operator by citation of the above violation. If an operator then  
13 fails to begin reclamation within sixty (60) days after receiving the  
14 notification, the ~~department~~ division may then issue a second citation. The  
15 second citation will be accompanied by a fine of not more than fifty dollars  
16 (\$50.00) per day until reclamation begins. If an operator's reclamation  
17 effort does not begin within sixty (60) days of the second citation and the  
18 fine is in force for that period, then the ~~department~~ division will notify  
19 the operator that the operation is in default. The ~~department~~ division will  
20 then use the proceeds of the operator's forfeited bond to have the quarry  
21 site reclaimed as per the reclamation plan.

22

23 SECTION 618. Arkansas Code § 15-57-410(5), concerning quarry site  
24 safety, is amended to read as follows:

25 (5) After January 1, 1998, no active quarry wall will be closer  
26 than fifty feet (50') from any private property line unless written  
27 permission is given by the adjacent property owner. Permission will be on  
28 file at the operator's office and a copy will be sent to the ~~Arkansas~~  
29 ~~Department~~ Division of Environmental Quality;

30

31 SECTION 619. Arkansas Code § 15-57-410(10) and (11), concerning quarry  
32 site safety, are amended to read as follows:

33 (10) If the ~~Arkansas Department of Environmental Quality~~  
34 division finds the operator to be out of compliance with any of the  
35 requirements of subdivisions (1), (2), and (3) of this section, a citation  
36 will be given to the operator to comply within ninety (90) days. If the

1 operator fails to comply within the ninety-day time requirement or shows no  
2 effort to comply, the ~~department~~ division may levy by citation a fine of not  
3 more than one hundred dollars (\$100) per day until the operator complies with  
4 said requirements. The maximum fine is five thousand dollars (\$5,000); and

5 (11) Any operator quarrying in violation of subdivisions (4) and  
6 (5) of this section will be subject to an immediate assessment of a fine of  
7 not more than one hundred dollars (\$100) per day or a shut down order by the  
8 ~~Arkansas Department of Environmental Quality~~ division, or both. The order  
9 will stay in effect at the discretion of the ~~Arkansas Department of~~  
10 ~~Environmental Quality~~ division until the operator is no longer in violation.

11  
12 SECTION 620. Arkansas Code § 15-57-411 is amended to read as follows:

13 15-57-411. Complaints of violations of this subchapter.

14 (a) The operator is required to document and respond to complaints by  
15 neighbors and citizens as they relate to the requirements of this subchapter.  
16 A record of the complaints and responses will be kept on file at the quarry  
17 office or company office for a minimum of two (2) years and sent to the  
18 ~~Arkansas Department~~ Division of Environmental Quality.

19 (b) Any complaints received by the ~~department~~ division as they relate  
20 to this subchapter will be forwarded to the operator. The operator's response  
21 will be kept on file for future departmental review at the quarry office or  
22 the company office for a minimum of two (2) years.

23 (c) The ~~department~~ division shall investigate complaints by neighbors  
24 and citizens to determine if violations of this subchapter have occurred.

25  
26 SECTION 621. Arkansas Code § 15-57-412(b)(1), concerning quarry bonds,  
27 is amended to read as follows:

28 (b)(1) As of January 1, 1998, the reclamation bond required for  
29 acceptance of an operator's notice of intent to open a quarry, or to  
30 reactivate a quarry, will be one thousand one hundred dollars (\$1,100) per  
31 acre of affected land. The face value of the bond will be evaluated every  
32 five (5) years by the operator and a representative of the ~~Arkansas~~  
33 ~~Department~~ Division of Environmental Quality.

34  
35 SECTION 622. Arkansas Code § 15-57-412(e), concerning quarry bonds, is  
36 amended to read as follows:

1 (e)(1) The operator may submit any of the following three (3) types of  
 2 bonds or substitute security:

3 (A) A surety bond;

4 (B) A collateral bond with supporting collateral  
 5 consisting of irrevocable letters of credit or certificates of deposit in  
 6 favor of the ~~department~~ division; and

7 (C) A self bond with an unencumbered right to certain  
 8 property to be held by the ~~department~~ division.

9 (2) Recommended bond forms shall be provided by the ~~department~~  
 10 division. A variation of the language in all but the self bond form may be  
 11 acceptable, provided the requirements of the subchapter and this Code are  
 12 incorporated and the ~~department~~ division approves the language.

13 (3) In the event self bonding is used, the following conditions  
 14 apply:

15 (A) The applicant must use the self bond form provided by  
 16 the ~~department~~ division;

17 (B) The collateral to be offered must be appraised by a  
 18 licensed appraiser approved by the operator and the ~~department~~ division;

19 (C) The operator must have unencumbered ownership of the  
 20 collateral and provide proof of such ownership to the ~~department~~ division;

21 (D) The value of the collateral as bond will be eighty  
 22 percent (80%) of the fair market value of the collateral as established by  
 23 the appraiser;

24 (E) Any collateral that decreases in value due to usage  
 25 (rolling stock) will be not be acceptable;

26 (F) In the event the collateral consists of real property,  
 27 an environmental audit of the area must be provided to the ~~department~~  
 28 division; and

29 (G) Where applicable, a lien will be filed against the  
 30 collateral until the affected area is reclaimed and released by the Arkansas  
 31 Pollution Control and Ecology Commission.

32  
 33 SECTION 623. Arkansas Code § 15-57-413 is amended to read as follows:  
 34 15-57-413. Hearing.

35 An operator may request and obtain an adjudicatory hearing and review  
 36 by the Arkansas Pollution Control and Ecology Commission of any decision by

1 the Director of the ~~Arkansas Department~~ Division of Environmental Quality to  
2 enforce the provisions of this subchapter, including any action to impose a  
3 civil penalty, stop quarrying activities, or forfeit a bond. The decision of  
4 the commission shall be final and may be appealed by the operator to the  
5 circuit court of the county in which the quarry is located in accordance with  
6 the Arkansas Code.

7  
8 SECTION 624. Arkansas Code § 15-57-414(a), concerning fees, fines, and  
9 forfeiture amounts collected by the Arkansas Department of Environmental  
10 Quality, is amended to read as follows:

11 (a) The ~~Arkansas Department~~ Division of Environmental Quality shall  
12 collect fees, fines, and bond forfeiture amounts pursuant to this subchapter.

13  
14 SECTION 625. Arkansas Code § 15-57-414(c), concerning fees, fines, and  
15 forfeiture amounts collected by the Arkansas Department of Environmental  
16 Quality, is amended to read as follows:

17 (c) The ~~department~~ division shall use these funds pursuant to this  
18 subchapter for contract awards for the reclamation of affected lands as  
19 required by this subchapter.

20  
21 SECTION 626. Arkansas Code § 15-58-102(3), concerning legislative  
22 findings under the Arkansas Surface Coal Mining and Reclamation Act of 1979,  
23 is amended to read as follows:

24 (3) Because surface coal mining in this state takes place in  
25 areas where the terrain, climate, biological, chemical, and other physical  
26 conditions are peculiar to this state and because the ~~Arkansas Department~~  
27 Division of Environmental Quality is familiar with these conditions, the  
28 ~~department~~ division has the primary responsibility to develop, issue, and  
29 enforce regulations for surface mining and reclamation operations in this  
30 state pursuant to this chapter and in compliance with applicable federal laws  
31 and regulations;

32  
33 SECTION 627. Arkansas Code § 15-58-104(4)-(6), concerning the  
34 definitions of "department", "director", and "fund" under the Arkansas  
35 Surface Coal Mining and Reclamation Act of 1979, are amended to read as  
36 follows:

1           (4) "Department" means the ~~Arkansas Department~~ Division of  
2 Environmental Quality or any department, bureau, commission, or agency that  
3 shall lawfully succeed to the powers and duties of that ~~department~~ division;

4           (5) "Director" means the executive head and active administrator  
5 of the ~~Arkansas Department~~ Division of Environmental Quality;

6           (6) "Fund" means the Abandoned Mine Reclamation Fund  
7 administrated by the United States Secretary of the Interior pursuant to the  
8 Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87. Moneys  
9 from the fund may be received by the ~~department~~ division through a grant from  
10 the Secretary of the Interior pursuant to the state abandoned mine  
11 reclamation program;

12  
13           SECTION 628. Arkansas Code § 15-58-104(13) and (14), concerning the  
14 definitions of "state program" and "state abandoned mine reclamation program"  
15 under the Arkansas Surface Coal Mining and Reclamation Act of 1979, are  
16 amended to read as follows:

17           (13) "State program" means a program established by the  
18 ~~department~~ division and approved by the Secretary of the Interior pursuant to  
19 section 503 of the Surface Mining Control and Reclamation Act of 1977, Pub.  
20 L. No. 95-87, to regulate surface coal mining and reclamation operations on  
21 lands within the state;

22           (14) "State abandoned mine reclamation program" means a plan  
23 established by the ~~department~~ division and approved by the United States  
24 Secretary of the Interior pursuant to Title IV of the Surface Mining Control  
25 and Reclamation Act of 1977, Pub. L. No. 95-87, to reclaim mined areas of the  
26 state which were left without adequate reclamation prior to August 3, 1977;

27  
28           SECTION 629. Arkansas Code § 15-58-201 is amended to read as follows:

29           15-58-201. ~~Department~~ Division - Jurisdiction, powers, and duties.

30           (a) The ~~Arkansas Department~~ Division of Environmental Quality is  
31 designated as the official agency whose duty it is to establish policies and  
32 guidelines, to administer the guidelines contained in this chapter, and to  
33 institute other reasonable regulations and guidelines as they become  
34 necessary pursuant to this chapter. The rules and regulations may provide  
35 differing terms and provisions for particular conditions, particular mining  
36 techniques, types of coal, particular areas of the state, surface mines, and

1 the surface impacts of underground mines or any other differences which  
2 appear relevant and necessary so long as the action taken is consistent with  
3 attainment of the general intent and purposes of this chapter.

4 (b) Exclusive jurisdiction over those aspects of surface coal mining  
5 and reclamation operations in this state regulated by the Surface Mining  
6 Control and Reclamation Act of 1977, Pub. L. No. 95-87, shall be vested in  
7 the ~~department~~ division.

8  
9 SECTION 630. The introductory language of Arkansas Code § 15-58-  
10 203(a), concerning the powers and duties of the Director of the Arkansas  
11 Department of Environmental Quality, is amended to read as follows:

12 (a) The authority shall be vested in the Director of the ~~Arkansas~~  
13 ~~Department~~ Division of Environmental Quality and such other persons as  
14 designated by the director to administer and enforce the provisions of this  
15 chapter. The director shall seek the accomplishment of the purposes of this  
16 chapter by all practicable and economically feasible methods, and in doing  
17 so, shall have the following duties and powers:

18  
19 SECTION 631. Arkansas Code § 15-58-203(a)(13), concerning the powers  
20 and duties of the Director of the Arkansas Department of Environmental  
21 Quality, is amended to read as follows:

22 (13) To contract upon such terms as the director may agree upon  
23 for legal, financial, engineering, and other professional services necessary  
24 to expedite the conduct of the affairs of the ~~Arkansas Department~~ Division of  
25 Environmental Quality under the provisions of this chapter;

26  
27 SECTION 632. Arkansas Code § 15-58-205(a), concerning inspections by  
28 the Director of the Arkansas Department of Environmental Quality under the  
29 Arkansas Surface Coal Mining and Reclamation Act of 1979, is amended to read  
30 as follows:

31 (a) The Director of the ~~Arkansas Department~~ Division of Environmental  
32 Quality shall require such monitoring and reporting, shall cause to be made  
33 such inspections of any surface coal mining and reclamation operations, shall  
34 require the maintenance of such signs and markers, and shall take such other  
35 actions as are necessary to administer, enforce, and evaluate the  
36 administration of this chapter and to meet the state program requirements.

1 For these purposes, the director or his or her authorized representatives,  
2 upon presentation of appropriate identifying credentials, shall have a right  
3 of entry to, upon, or through any surface coal mining and reclamation  
4 operations and, at reasonable times and without delay, may have access to and  
5 copy any records and inspect any monitoring equipment or method of operation  
6 required under this chapter or the regulations issued pursuant to this  
7 chapter.

8  
9 SECTION 633. Arkansas Code § 15-58-205(c)(2), concerning inspections  
10 by the Director of the Arkansas Department of Environmental Quality under the  
11 Arkansas Surface Coal Mining and Reclamation Act of 1979, is amended to read  
12 as follows:

13 (2) Any person who is or may be adversely affected by a surface  
14 coal mining operation may notify the director or the commission of any  
15 failure on behalf of the ~~Arkansas Department~~ Division of Environmental  
16 Quality to make proper inspections, after which the director, the commission,  
17 or their authorized representatives shall determine whether adequate and  
18 complete inspections have been made.

19  
20 SECTION 634. The introductory language of Arkansas Code § 15-58-  
21 207(a), concerning procedures and notice of public hearings by the Director  
22 of the Arkansas Department of Environmental Quality or the Arkansas Pollution  
23 Control and Ecology Commission, is amended to read as follows:

24 (a) The Director of the ~~Arkansas Department~~ Division of Environmental  
25 Quality or the Arkansas Pollution Control and Ecology Commission shall give  
26 public notice of each of the following pending, proposed, or requested  
27 actions:

28  
29 SECTION 635. Arkansas Code § 15-58-208(a), concerning an examiner to  
30 preside at hearings designated by the Arkansas Pollution Control and Ecology  
31 Commission or the Director of the Arkansas Department of Environmental  
32 Quality, is amended to read as follows:

33 (a) For the purpose of receiving and responding to written comments  
34 and objections and for presiding at a public hearing, the Arkansas Pollution  
35 Control and Ecology Commission or the Director of the ~~Arkansas Department~~  
36 Division of Environmental Quality may designate one (1) or more examiners.



1  
2 SECTION 636. Arkansas Code § 15-58-211(c), concerning adjudicatory  
3 hearings and procedures of the Arkansas Pollution Control and Ecology  
4 Commission, is amended to read as follows:

5 (c) Nothing in this chapter shall prohibit disposition of the matter  
6 through an informal conference before the Director of the ~~Arkansas Department~~  
7 Division of Environmental Quality if all parties agree, or disposition by  
8 stipulation, settlement, consent order, or default.

9  
10 SECTION 637. Arkansas Code § 15-58-301(a), concerning cessation orders  
11 and violations deemed not to cause imminent danger or harm, is amended to  
12 read as follows:

13 (a) If the Director of the ~~Arkansas Department~~ Division of  
14 Environmental Quality or his or her authorized representative determines on  
15 the basis of an inspection or other available information that a permittee is  
16 in violation of a requirement of this chapter or of the regulations issued  
17 pursuant to this chapter or a permit condition required by this chapter or  
18 the regulations issued pursuant to this chapter but the violation does not  
19 create an imminent danger to the health or safety of the public or is not  
20 causing or reasonably expected to cause significant imminent environmental  
21 harm to land, air, or water resources, the director or his or her authorized  
22 representative shall issue a notice of violation to the permittee or his or  
23 her agent fixing a reasonable time, but not more than ninety (90) days, for  
24 the abatement of the violation in accordance with the procedures set out in  
25 regulations issued by the Arkansas Pollution Control and Ecology Commission  
26 pursuant to this chapter.

27  
28 SECTION 638. Arkansas Code § 15-58-302(a), concerning cessation orders  
29 deemed to cause danger or harm, is amended to read as follows:

30 (a) If the Director of the ~~Arkansas Department~~ Division of  
31 Environmental Quality or his or her authorized representative determines, on  
32 the basis of an inspection or other available information, that a condition  
33 or practice exists or that a permittee is in violation of a requirement of  
34 this chapter or of the regulations issued pursuant to this chapter or of a  
35 permit condition required by this chapter or the regulations issued pursuant  
36 to this chapter, and that this condition, practice, or violation also creates

1 an imminent danger to the health or safety of the public or is causing or can  
2 reasonably be expected to cause significant imminent environmental harm to  
3 land, air, or water resources, the director or his or her authorized  
4 representative or agent shall immediately issue a cessation order in  
5 accordance with the procedures set out in regulations issued by the Arkansas  
6 Pollution Control and Ecology Commission pursuant to this chapter requiring  
7 the immediate termination of all surface coal mining and reclamation  
8 operations or the portion thereof relevant to the condition, practice, or  
9 violation.

10  
11 SECTION 639. Arkansas Code § 15-58-303(a), concerning an order to show  
12 cause and a pattern of violations found by the Director of the Arkansas  
13 Department of Environmental Quality, is amended to read as follows:

14 (a) On the basis of an inspection, if the Director of the ~~Arkansas~~  
15 ~~Department~~ Division of Environmental Quality or his or her authorized agent  
16 has reason to believe that a pattern of violations of any requirements of  
17 this chapter or the regulations issued pursuant to this chapter or any permit  
18 conditions required by this chapter or by the regulations issued pursuant to  
19 this chapter exists or has existed and if the director or his or her  
20 authorized agent also finds that these violations are caused by the  
21 unwarranted failure of the permittee to comply with requirements of this  
22 chapter or permit conditions or that the violations are willfully caused by  
23 the permittee, the director or his or her authorized agent shall issue to the  
24 permittee forthwith an order to show cause as to why the permit should not be  
25 suspended or revoked in accordance with the procedures set out in regulations  
26 issued by the Arkansas Pollution Control and Ecology Commission pursuant to  
27 this chapter.

28  
29 SECTION 640. Arkansas Code § 15-58-305 is amended to read as follows:  
30 15-58-305. Interfering with the director or his or her agents –  
31 Criminal penalties.

32 Any person who shall, except as permitted by law, willfully resist,  
33 prevent, impede, or interfere with the Director of the ~~Arkansas Department~~  
34 Division of Environmental Quality or any of his or her authorized  
35 representatives in the performance of duties pursuant to this chapter shall  
36 be guilty of a misdemeanor and may be punished upon conviction by a criminal

1 penalty of not more than five thousand dollars (\$5,000) or by imprisonment  
2 for not more than one (1) year, or by both.

3  
4 SECTION 641. Arkansas Code § 15-58-308(a), concerning civil actions  
5 and injunctions undertaken by the Arkansas Pollution and Ecology Commission  
6 or the Director of the Arkansas Department of Environmental Quality, is  
7 amended to read as follows:

8 (a) The Arkansas Pollution Control and Ecology Commission or the  
9 Director of the ~~Arkansas Department~~ Division of Environmental Quality may  
10 request the Attorney General or an attorney designated by the director to  
11 institute without bond or other undertaking a civil action for relief against  
12 a permittee or any person engaging in surface coal mining operations without  
13 a permit, including an injunction, restraining order, or any other  
14 appropriate order in the county in which any part of the surface coal mining  
15 and reclamation operation involved is located, or in the county in which the  
16 permittee has his or her principal office. No liability whatsoever shall  
17 accrue to the commission, the director, or their authorized representatives  
18 on taking any actions pursuant to this section.

19  
20 SECTION 642. Arkansas Code § 15-58-309(a)(2), concerning the private  
21 right of action against the State of Arkansas under the Arkansas Surface Coal  
22 Mining and Reclamation Act of 1979, is amended to read as follows:

23 (2) Against the Director of the ~~Arkansas Department~~ Division of  
24 Environmental Quality or the Arkansas Pollution Control and Ecology  
25 Commission where there is alleged a failure of the director or the commission  
26 to perform any act or duty under this chapter which is not discretionary with  
27 the director or with the commission.

28  
29 SECTION 643. Arkansas Code § 15-58-309(c)(2), concerning the private  
30 right of action against the State of Arkansas under the Arkansas Surface Coal  
31 Mining and Reclamation Act of 1979, is amended to read as follows:

32 (2) In any action under this section, the director, the  
33 commission, or the ~~Arkansas Department~~ Division of Environmental Quality, if  
34 not a party, may intervene as a matter of right.

35  
36 SECTION 644. Arkansas Code § 15-58-309(d)-(f), concerning the private

1 right of action against the State of Arkansas under the Arkansas Surface Coal  
2 Mining and Reclamation Act of 1979, are amended to read as follows:

3 (d) The court, in issuing any final order in any action brought  
4 pursuant to subsection (a) of this section, may award costs of litigation,  
5 including attorney and expert witness fees, to any party whenever the court  
6 determines the award is appropriate. If a temporary restraining order or  
7 preliminary injunction is sought, the court may require the filing of a bond  
8 or equivalent security, provided that no bond shall be required if the  
9 temporary restraining order or preliminary injunction is sought by the  
10 director, the commission, or the ~~department~~ division.

11 (e) Nothing in this section shall restrict any right which any person  
12 or class of persons may have under any statute or common law to seek  
13 enforcement of any of the provisions of this chapter and the regulations  
14 thereunder or to seek any other relief, including relief against the  
15 director, the commission, or the ~~department~~ division.

16 (f) Any person who is injured in his or her person or property through  
17 the violation by any operation of any rule, regulation, order, or permit  
18 issued pursuant to this chapter may bring an action for damages, including  
19 reasonable attorney and expert witness fees only in the judicial district in  
20 which the surface coal mining operation complained of is located. Nothing in  
21 this subsection shall affect the rights established by or limits imposed  
22 under the Workers' Compensation Law, § 11-9-101 et seq.

23  
24 SECTION 645. The introductory language of Arkansas Code § 15-58-  
25 401(b), concerning lands and water eligible for reclamation or drainage  
26 abatement expenditures, is amended to read as follows:

27 (b) Notwithstanding subsection (a) of this section, lands and water  
28 similarly affected by coal mining or other mining processes and abandoned or  
29 left in an inadequate reclamation status after August 3, 1977, are also  
30 eligible for reclamation or drainage abatement expenditures under this  
31 chapter if the Director of the ~~Arkansas Department~~ Division of Environmental  
32 Quality makes either of the following findings:

33  
34 SECTION 646. The introductory language of Arkansas Code § 15-58-  
35 404(a), concerning abatement of adverse effects, and liens regarding the  
36 state abandoned mine reclamation program, is amended to read as follows:

1 (a) The Director of the ~~Arkansas Department~~ Division of Environmental  
2 Quality or his or her authorized representative, under the state abandoned  
3 mine reclamation program, shall make a finding of fact that:  
4

5 SECTION 647. Arkansas Code § 15-58-405(a), concerning the right of  
6 entry for an approved state abandoned mine reclamation program, is amended to  
7 read as follows:

8 (a) The Director of the ~~Arkansas Department~~ Division of Environmental  
9 Quality or his or her authorized representative pursuant to an approved state  
10 abandoned mine reclamation program shall have the right to enter upon any  
11 property for the purpose of conducting studies or exploratory work to  
12 determine the existence of adverse effects of past coal mining practices and  
13 to determine the feasibility of restoration, reclamation, abatement, control,  
14 or prevention of the adverse effects.  
15

16 SECTION 648. The introductory language of Arkansas Code § 15-58-  
17 406(a), concerning condemnation of a mine by the Director of the Arkansas  
18 Department of Environmental Quality, is amended to read as follows:

19 (a) The Director of the ~~Arkansas Department~~ Division of Environmental  
20 Quality, personally or through his or her authorized legal representative,  
21 pursuant to an approved state abandoned mine reclamation program, may acquire  
22 for the state any land, by purchase, donation, or condemnation, which is  
23 adversely affected by past coal mining practices if the director determines  
24 that acquisition of such land is necessary to successful reclamation and  
25 that:  
26

27 SECTION 649. Arkansas Code § 15-58-502(b), concerning the necessity of  
28 a permit and application, is amended to read as follows:

29 (b) No person shall engage in or carry out on lands within the state  
30 any surface coal mining operations unless that person has first obtained a  
31 permit issued by the Director of the ~~Arkansas Department~~ Division of  
32 Environmental Quality pursuant to this chapter and in accordance with the  
33 regulations issued pursuant to this chapter.  
34

35 SECTION 650. Arkansas Code § 15-58-503(a)(3)(A), concerning the power  
36 of the Arkansas Pollution Control and Ecology Commission under the Surface

1 Mining Control and Reclamation Act of 1977, is amended to read as follows:

2 (3)(A) The regulations shall specifically provide that all  
3 applications shall include a determination of the probable hydrologic  
4 consequences of the mining and reclamation operations, both on and off the  
5 mine site, with respect to the hydrologic regime, quantity, and quality of  
6 water in surface and groundwater systems, including the dissolved and  
7 suspended solids under seasonal flow conditions and the collection of  
8 sufficient data for the mine site and surrounding surface areas so that an  
9 assessment can be made by the Director of the ~~Arkansas Department~~ Division of  
10 Environmental Quality of the probable cumulative impacts of all anticipated  
11 mining in the area upon the hydrology of the area and particularly upon water  
12 availability. However, this determination shall not be required until  
13 hydrologic information on the general area prior to mining is made available  
14 from an appropriate federal or state agency. The permit shall not be approved  
15 until the information is available and is incorporated into the application.  
16

17 SECTION 651. The introductory language of Arkansas Code § 15-58-  
18 503(a)(3)(B), concerning the power of the Arkansas Pollution Control and  
19 Ecology Commission under the Surface Mining Control and Reclamation Act of  
20 1977, is amended to read as follows:

21 (B) The costs of the following activities, which shall be  
22 performed by a qualified public or private laboratory or other public or  
23 private qualified entity designated by the ~~Arkansas Department~~ Division of  
24 Environmental Quality shall be borne, upon written request of the small  
25 operator, by the ~~department~~ division in accordance with regulations issued by  
26 the commission:  
27

28 SECTION 652. Arkansas Code § 15-58-503(a)(3)(B)(vii), concerning the  
29 power of the Arkansas Pollution Control and Ecology Commission under the  
30 Surface Mining Control and Reclamation Act of 1977, is amended to read as  
31 follows:

32 (vii) The ~~department~~ division shall provide or  
33 assume the cost of training small operators concerning the preparation of  
34 permit applications and compliance with the regulatory program and shall  
35 ensure that small operators are aware of the assistance available under this  
36 subdivision (a)(2).

1  
2 SECTION 653. Arkansas Code § 15-58-503(a)(3)(C), concerning the power  
3 of the Arkansas Pollution Control and Ecology Commission under the Surface  
4 Mining Control and Reclamation Act of 1977, is amended to read as follows:

5 (C) A coal operator that has received assistance pursuant  
6 to this subdivision (a)(2) shall reimburse the ~~department~~ division for the  
7 cost of the services rendered if the director finds that the operator's  
8 actual and attributed annual production of coal for all locations exceeds  
9 three hundred thousand (300,000) tons during the twelve (12) months  
10 immediately following the date on which the operator is issued the surface  
11 coal mining and reclamation permit.  
12

13 SECTION 654. Arkansas Code § 15-58-503(c), concerning the power of the  
14 Arkansas Pollution Control and Ecology Commission under the Surface Mining  
15 Control and Reclamation Act of 1977, is amended to read as follows:

16 (c) The commission shall issue regulations to protect confidential  
17 information which is submitted to the ~~department~~ division as part of a permit  
18 application or pursuant to the coal exploration requirements.  
19

20 SECTION 655. Arkansas Code § 15-58-504(b), concerning coal exploration  
21 operations, is amended to read as follows:

22 (b) Coal exploration regulations shall provide, at a minimum, that  
23 prior to conducting any exploration under this subchapter, any person must  
24 file with the ~~Arkansas Department~~ Division of Environmental Quality notice of  
25 intention to explore, and that no operator shall remove more than two hundred  
26 fifty (250) tons of coal pursuant to an exploration permit without the  
27 specific written approval of the ~~department~~ division.  
28

29 SECTION 656. Arkansas Code § 15-58-508(a), concerning fees of the  
30 Surface Coal Mining Operation Fund, is amended to read as follows:

31 (a) Each application for a surface coal mining permit or renewal of  
32 that permit shall be accompanied by an initial application fee as determined  
33 by the Director of the ~~Arkansas Department~~ Division of Environmental Quality  
34 in accordance with a fee schedule which the Arkansas Pollution Control and  
35 Ecology Commission shall develop and issue by regulations.  
36

1 SECTION 657. Arkansas Code § 15-58-508(d), concerning fees of the  
2 Surface Coal Mining Operation Fund, is amended to read as follows:

3 (d) The ~~Arkansas Department~~ Division of Environmental Quality shall  
4 maintain a separate Surface Coal Mining Operation Fund for the fees which may  
5 only be used for the administration and enforcement of this chapter and as  
6 the state's matching percentage share for any grants available to the state  
7 for the administration and enforcement of the state program.

8  
9 SECTION 658. Arkansas Code § 15-58-509(a) and (b), concerning the  
10 filing of performance bonds with the Arkansas Department of Environmental  
11 Quality, are amended to read as follows:

12 (a) After a surface coal mining and reclamation permit application has  
13 been approved but before the permit is issued, the applicant shall file a  
14 bond with the ~~Arkansas Department~~ Division of Environmental Quality. This  
15 bond shall be on a form furnished by the ~~department~~ division in accordance  
16 with the regulations issued by the Arkansas Pollution Control and Ecology  
17 Commission. It shall be for performance or acceptable alternative payable, as  
18 appropriate, to the ~~department of~~ division and conditioned upon faithful  
19 performance of all the requirements of this chapter, the regulations issued  
20 pursuant to this chapter, and the permit.

21 (b) All forfeitures collected under this chapter shall be deposited  
22 into a separate Mining Reclamation Trust Fund which shall be maintained by  
23 the ~~department~~ division. The fund may only be used to accomplish reclamation  
24 of land covered by forfeitures of performance bonds.

25  
26 SECTION 659. Arkansas Code § 15-58-509(e), concerning the filing of  
27 performance bonds with the Arkansas Department of Environmental Quality, is  
28 amended to read as follows:

29 (e) The amount of the bond shall be sufficient to assure the  
30 completion of the reclamation plan if the work had to be performed by the  
31 ~~department~~ division in the event of forfeiture. In no case shall the bond for  
32 the entire area under one (1) permit be less than ten thousand dollars  
33 (\$10,000).

34  
35 SECTION 660. Arkansas Code § 15-71-104(a)(1), concerning counsel for  
36 the Oil and Gas Commission, is amended to read as follows:



1 15-71-104. Counsel for the commission.

2 (a)(1) The Oil and Gas Commission, with the approval of the Secretary  
3 of the Department of Energy and Environment, may employ an attorney to  
4 provide specialized professional services in matters requiring legal  
5 representation.

6  
7 SECTION 661. Arkansas Code § 15-71-105(a) and (b), concerning the  
8 Director of Production and Conservation, is amended to read as follows:

9 (a)(1) The Oil and Gas Commission may appoint one (1) Director of  
10 Production and Conservation in consultation with the Secretary of the  
11 Department of Energy and Environment.

12 (2) The appointment under subdivision (a)(1) of this section is  
13 with the approval of the Governor .

14 (3) The director serves at the pleasure of the Governor at the  
15 salary set by law.

16 (4) The director shall report to the Secretary of the Department  
17 of Energy and Environment.

18 (b) The commission and the secretary may authorize the director to  
19 employ other assistants, petroleum and natural gas engineers, bookkeepers,  
20 auditors, gaugers, and stenographers and other employees as necessary to  
21 properly administer and enforce the provisions of this act.

22  
23 SECTION 662. Arkansas Code § 15-71-110(d)(16), concerning the powers  
24 and duties of the Oil and Gas Commission, is amended to read as follows:

25 (16) To acquire primary enforcement responsibility either  
26 singularly or jointly with the ~~Arkansas Department~~ Division of Environmental  
27 Quality for the control of underground injection under the applicable  
28 provisions of the Safe Drinking Water Act, Pub. L. No. 93-523, as it existed  
29 on January 1, 2005;

30  
31 SECTION 663. Arkansas Code § 15-71-113(a), concerning the authority to  
32 acquire and maintain unmarked cars, is amended to read as follows:

33 (a) In order to enable the Oil and Gas Commission to carry out its  
34 duties in the most effective and efficient manner, the commission is  
35 authorized, upon the approval of the Secretary of the Department of Energy  
36 and Environment, to acquire and maintain for use by field personnel full-

1 sized sedan automobiles equipped with V-8 engines in the 350 cubic inch  
2 displacement range, limited slip differentials, and vinyl seat covers.

3  
4 SECTION 664. Arkansas Code § 15-72-219(b)(1), concerning the  
5 compensation of surface owners and surface tenants for damages and  
6 restoration of land, is amended to read as follows:

7 (1) ~~Arkansas Department~~ Division of Environmental Quality; or

8  
9 SECTION 665. The introductory language of Arkansas Code § 15-72-  
10 219(c), concerning the compensation of surface owners and surface tenants for  
11 damages and restoration of land, is amended to read as follows:

12 (c) Any rules or regulations adopted by the ~~department~~ division or the  
13 commission pertaining to spills of crude oil or produced water shall:

14  
15 SECTION 666. Arkansas Code § 15-72-219(f), concerning the compensation  
16 of surface owners and surface tenants for damages and restoration of land, is  
17 amended to read as follows:

18 (f) Nothing contained in this section is intended to limit or restrict  
19 the rights of any surface owner or surface tenant to maintain a cause of  
20 action for any damage to real property that is not addressed by the rules and  
21 regulations adopted by the ~~department~~ division or the commission pertaining  
22 to spills of crude oil or produced water.

23  
24 SECTION 667. Arkansas Code § 15-72-802(1), concerning the definition  
25 of "assignment" under the Emergency Petroleum Set-Aside Act, is amended to  
26 read as follows:

27 (1) "Assignment" means an action taken by the Arkansas Energy  
28 Office of the ~~Arkansas Department~~ Division of Environmental Quality,  
29 designating that a prime supplier of petroleum products supply them to an  
30 authorized consumer, wholesale purchaser-consumer, or wholesale purchaser-  
31 reseller to facilitate relief of emergency or hardship needs, pursuant to §  
32 15-72-804;

33  
34 SECTION 668. Arkansas Code § 15-72-802(9), concerning the definition  
35 of "set-aside" under the Emergency Petroleum Set-Aside Act, is amended to  
36 read as follows:

1           (9) "Set-aside" means, with respect to a particular prime  
 2 supplier, the amount of a petroleum product which is made available from the  
 3 total supply of a prime supplier, pursuant to the provisions of § 15-72-804,  
 4 for utilization by the Arkansas Energy Office of the ~~Arkansas Department~~  
 5 Division of Environmental Quality to resolve emergencies and hardships due to  
 6 shortages or other dislocations in petroleum products distribution systems;  
 7 and

8  
 9           SECTION 669. Arkansas Code § 15-72-804(a)(2), concerning the  
 10 establishment of the state emergency petroleum set-aside general provisions,  
 11 is amended to read as follows:

12           (2) The rules shall direct prime suppliers and brokers to set  
 13 aside a percentage of petroleum products that are delivered to suppliers in  
 14 the state for the Arkansas Energy Office of the ~~Arkansas Department~~ Division  
 15 of Environmental Quality to distribute to meet emergency and hardship needs.  
 16

17           SECTION 670. Arkansas Code § 15-75-206 is amended to read as follows:  
 18 15-75-206. Personnel – Counsel.

19           (a) The Liquefied Petroleum Gas Board shall appoint a Director of the  
 20 Liquefied Petroleum Gas Board to serve with the approval ~~and at the pleasure~~  
 21 ~~of the Governor~~ of the Secretary of the Department of Energy and Environment.

22           (b) The director shall have the authority, upon approval of the  
 23 secretary, to:

24           (1) Employ assistants, inspectors, and other personnel; and

25           (2) Retain counsel as may be necessary to aid it properly in the  
 26 administration of this subchapter, with the approval of the board.

27           (c)(1)(A) The director shall have the power and duty to receive  
 28 applications and to review and approve applications for all classes of  
 29 permits after applications and supporting papers have been on file for at  
 30 least thirty (30) days.

31           (B) The director may issue class one permits once all  
 32 conditions or prerequisites have been met as set out in § 15-75-307 and the  
 33 application has been approved by the board.

34           (C) The director may issue all class two through class ten  
 35 permits after all conditions and prerequisites have been met as set out in §§  
 36 15-75-308 – 15-75-317.

1 (2) The director may refuse to approve applications for permits  
 2 for safety reasons.

3 (d) The director's decisions on the approval of the applications for  
 4 class one permits shall be reviewed by the board at its next regularly  
 5 scheduled meeting.

6  
 7 SECTION 671. Arkansas Code § 15-75-301(2), concerning the definition  
 8 of "director" under the Liquefied Petroleum Gas Board laws, is amended to  
 9 read as follows:

10 (2) "Director" means the Director of the Liquefied Petroleum Gas  
 11 Board appointed by the board, ~~and~~ serving with the approval and at the  
 12 pleasure of the Governor, and shall report to the Secretary of the Department  
 13 of Energy and Environment; and

14  
 15 SECTION 672. Arkansas Code § 15-76-324 is amended to read as follows:  
 16 15-76-324. ~~Arkansas Department~~ Division of Environmental Quality.

17 (a) Nothing contained in this subchapter shall affect the jurisdiction  
 18 of the ~~Arkansas Department~~ Division of Environmental Quality over owners or  
 19 producers of brine or the processing and disposal of brine with respect to  
 20 water or air pollution control or other matters within its jurisdiction or  
 21 the requirement that owners, producers, and processors apply for and obtain a  
 22 permit from the ~~department~~ division as provided by the Arkansas Water and Air  
 23 Pollution Control Act, as amended, § 8-4-101 et seq.

24 (b) Nothing contained in this subchapter confers upon the Arkansas  
 25 Pollution Control and Ecology Commission any authority or jurisdiction  
 26 conferred by law upon the ~~department~~ division or shall be deemed to amend the  
 27 Arkansas Water and Air Pollution Control Act, as amended, § 8-4-101 et seq.

28  
 29 SECTION 673. Arkansas Code § 17-29-313(a)(2)(B)(ii)(b), concerning the  
 30 requirement of a permit to construct or operate a crematorium, is amended to  
 31 read as follows:

32 (b) A copy of the permit issued by the  
 33 ~~Arkansas Department~~ Division of Environmental Quality under § 8-4-203 to  
 34 construct the crematorium; and

35  
 36 SECTION 674. Arkansas Code § 17-44-108(b)(2), concerning a license

1 requirement for all scrap metal recyclers, is amended to read as follows:

2 (2) Show proof of a required national pollution discharge  
3 elimination system stormwater permit issued by the ~~Arkansas Department~~  
4 Division of Environmental Quality; and

5  
6 SECTION 675. Arkansas Code § 18-15-1703(e)(2), concerning an  
7 application and taking of real property, is amended to read as follows:

8 (2) Laws or rules within the jurisdiction of the State Health  
9 Officer or regulatory activities of the Arkansas Pollution Control and  
10 Ecology Commission, the ~~Arkansas Department~~ Division of Environmental  
11 Quality, the Arkansas Livestock and Poultry Commission, the Arkansas Public  
12 Service Commission, or the State Plant Board under delegated or authorized  
13 programs or approved plans under federal law;

14  
15 SECTION 676. Arkansas Code § 19-5-302(4), concerning the Arkansas  
16 Department of Environmental Quality Fund Account of the State General  
17 Government Fund, is amended to read as follows:

18 (4) ~~Arkansas Department~~ Division of Environmental Quality Fund  
19 Account.

20 (A) The ~~Arkansas Department~~ Division of Environmental  
21 Quality Fund Account shall be used for the maintenance, operation, and  
22 improvement required by the ~~Arkansas Department~~ Division of Environmental  
23 Quality in carrying out the powers, functions, and duties as set out in Title  
24 8, Chapters 1-10, or other duties imposed by law upon the Arkansas Pollution  
25 Control and Ecology Commission which were transferred to the ~~Arkansas~~  
26 ~~Department~~ Division of Environmental Quality under the provisions of § 25-14-  
27 101.

28 (B) The ~~Arkansas Department~~ Division of Environmental Quality  
29 Fund Account shall consist of:

30 (i) Those general revenues as may be provided by law;

31 (ii) Such funds received from the Arkansas State Game and  
32 Fish Commission and from the Oil and Gas Commission as may be provided by  
33 law;

34 (iii) Nonrevenue income derived from services provided by  
35 the ~~Arkansas Department~~ Division of Environmental Quality; and

36 (iv) Any other funds provided by law;

1  
2 SECTION 677. Arkansas Code § 19-5-930(b), concerning the Hazardous  
3 Substance Remedial Action Trust Fund, is amended to read as follows:

4 (b) The Hazardous Substance Remedial Action Trust Fund shall consist  
5 of all moneys appropriated by the General Assembly to the Hazardous Substance  
6 Remedial Action Trust Fund, gifts, donations, interest earnings, fees on the  
7 generation of hazardous waste, punitive damages, penalties, and any other  
8 moneys legally designated, with the exception of those moneys deposited into  
9 the Environmental Education Fund as set out in § 8-7-509(d), all moneys  
10 received as penalties under §§ 8-4-101 – 8-4-106, 8-4-201 – 8-4-229, 8-4-301  
11 – 8-4-313, 8-6-201 – 8-6-212, 8-6-213 [repealed], 8-6-214, 8-7-201 – 8-7-226,  
12 8-7-504, and 20-27-1001 – 20-27-1007, and all punitive damages collected  
13 under § 8-7-517, there to be administered by the Director of the ~~Arkansas~~  
14 ~~Department~~ Division of Environmental Quality as provided in § 8-7-509.

15  
16 SECTION 678. Arkansas Code § 19-5-959(b), concerning the Petroleum  
17 Storage Tank Trust Fund, is amended to read as follows:

18 (b) The Petroleum Storage Tank Trust Fund shall consist of the  
19 petroleum environmental assurance fees as provided in § 8-7-906, all other  
20 fees assessed under the Petroleum Storage Tank Trust Fund Act, § 8-7-901 et  
21 seq., gifts, grants, donations, such other funds made available by the  
22 General Assembly, the excess of a reserve of two (2) months requirements of  
23 debt service from fees in the Petroleum Storage Tank Trust Fund Revenue Bond  
24 Debt Service Fund under § 15-5-1206 and any moneys recovered by the ~~Arkansas~~  
25 ~~Department~~ Division of Environmental Quality which are attributable to  
26 collections of civil penalties under § 8-7-806 or to costs under § 8-7-807  
27 not owed the Regulated Substance Storage Tank Program Fund, there to be  
28 administered by the Director of the ~~Arkansas Department~~ Division of  
29 Environmental Quality, who shall make disbursements from the Petroleum  
30 Storage Tank Trust Fund as authorized by the Petroleum Storage Tank Trust  
31 Fund Act, § 8-7-901 et seq.

32  
33 SECTION 679. Arkansas Code § 19-5-961(b), concerning the Solid Waste  
34 Management and Recycling Fund, is amended to read as follows:

35 (b) The fund shall consist of those special revenues specified in §§  
36 19-6-301(154) and 19-6-301(240), reimbursement of funds pursuant to § 8-6-

1 610, federal funds which may become available, interest earnings, gifts,  
2 donations, and any other funds made available by the General Assembly, there  
3 to be administered by the ~~Arkansas Department~~ Division of Environmental  
4 Quality as set out in the Solid Waste Management and Recycling Fund Act, § 8-  
5 6-601 et seq.

6  
7 SECTION 680. Arkansas Code § 19-5-979(b), concerning the Landfill  
8 Post-Closure Trust Fund, is amended to read as follows:

9 (b) The fund shall consist of those special revenues as specified in §  
10 19-6-301(167), federal funds, interest earned, and any gifts or donations,  
11 there to be used solely for the administration of and for landfill post-  
12 closure corrective action as administered by the ~~Arkansas Department~~ Division  
13 of Environmental Quality as set out in § 8-6-1001 et seq., and shall not be  
14 appropriated for any other purpose.

15  
16 SECTION 681. Arkansas Code § 19-5-983(b)(2), concerning the Land  
17 Reclamation Fund, is amended to read as follows:

18 (2) The fund shall be used for the reclamation of affected lands  
19 as administered by the ~~Arkansas Department~~ Division of Environmental Quality  
20 as set out in the Arkansas Open-Cut Land Reclamation Act, § 15-57-301 et  
21 seq., and for contract awards for affected lands as required by the Arkansas  
22 Quarry Operation, Reclamation, and Safe Closure Act, § 15-57-401 et seq.

23  
24 SECTION 682. Arkansas Code § 19-5-1027(b), concerning the  
25 Environmental Education Fund, is amended to read as follows:

26 (b) The Environmental Education Fund shall consist of that portion of  
27 moneys transferred, not to exceed two hundred seventy-five thousand dollars  
28 (\$275,000) per fiscal year, from the Hazardous Substance Remedial Action  
29 Trust Fund as set out in § 8-7-509, there to be used by the ~~Arkansas~~  
30 ~~Department~~ Division of Environmental Quality to provide environmental  
31 educational materials and training.

32  
33 SECTION 683. Arkansas Code § 19-5-1028(b), concerning the Abandoned  
34 Mine Reclamation Fund, is amended to read as follows:

35 (b) The fund shall consist of moneys received through a grant from the  
36 United States Secretary of the Interior pursuant to the State Abandoned Mine

1 Reclamation Program, there to be used by the ~~Arkansas Department~~ Division of  
2 Environmental Quality for that program.

3  
4 SECTION 684. Arkansas Code § 19-5-1029(b), concerning the Surface Coal  
5 Mining Operation Fund, is amended to read as follows:

6 (b) The fund shall consist of application and permit fees for surface  
7 coal mining, there to be used by the ~~Arkansas Department~~ Division of  
8 Environmental Quality only for the administration and enforcement of the  
9 Arkansas Surface Coal Mining and Reclamation Act of 1979, § 15-58-101 et  
10 seq., and as the state's matching percentage share for any grants available  
11 to the state for the administration and enforcement of the state program as  
12 defined in § 15-58-104.

13  
14 SECTION 685. Arkansas Code § 19-5-1102(b), concerning the Performance  
15 Partnership Trust Fund, is amended to read as follows:

16 (b) The Performance Partnership Trust Fund shall be used by the  
17 ~~Arkansas Department~~ Division of Environmental Quality to defray the costs of  
18 developing and implementing a management organization utilizing the  
19 principles of the National Environmental Performance Partnership System,  
20 advocated by the United States Environmental Protection Agency, which  
21 integrates environmental indicators, management information, and performance-  
22 based budgeting and accounting to measure agency performance.

23  
24 SECTION 686. Arkansas Code § 19-5-1105(b)(2), concerning the Small  
25 Business Revolving Loan Fund, is amended to read as follows:

26 (2) The Small Business Revolving Loan Fund shall be administered  
27 by the ~~Arkansas Department~~ Division of Environmental Quality and used  
28 exclusively for those purposes set out in the Small Business Revolving Loan  
29 Fund for Pollution Control and Prevention Technologies Act, § 8-5-801 et seq.

30  
31 SECTION 687. Arkansas Code § 19-5-1111 is amended to read as follows:  
32 19-5-1111. ~~ADEQ~~ Environmental Settlement Trust Fund.

33 There is created on the books of the Treasurer of State, the Auditor of  
34 State, and the Chief Fiscal Officer of the State, the "~~ADEQ~~ Environmental  
35 Settlement Trust Fund" to consist of funds received by the State of Arkansas  
36 pursuant to settlement agreements for environmental or natural resources



1 damages, interest earnings, and any other moneys designated to be deposited  
2 into the fund, there to be administered by the Director of the ~~Arkansas~~  
3 ~~Department~~ Division of Environmental Quality.

4  
5 SECTION 688. Arkansas Code § 19-5-1137 is amended to read as follows:  
6 19-5-1137. ~~Arkansas Department~~ Division of Environmental Quality Fee  
7 Trust Fund.

8 The ~~Arkansas Department~~ Division of Environmental Quality Fee Trust  
9 Fund shall consist of those special revenues as specified in § 19-6-301(104),  
10 there to be used to defray the costs of operating the ~~Arkansas Department~~  
11 Division of Environmental Quality as set out in §§ 8-1-101 – 8-1-107.

12  
13 SECTION 689. Arkansas Code § 19-5-1140(c), concerning the Water  
14 Performance Bond Fund, is amended to read as follows:

15 (c) The fund shall be used by the ~~Arkansas Department~~ Division of  
16 Environmental Quality to hire a third-party contractor to:

17 (1) Take remedial action, including without limitation  
18 corrective action, the closure of a nonmunicipal domestic sewage treatment  
19 works, and any other action the Director of the ~~Arkansas Department~~ Division  
20 of Environmental Quality determines to be necessary; or

21 (2) Maintain and operate a nonmunicipal domestic sewage  
22 treatment works.

23  
24 SECTION 690. Arkansas Code § 19-5-1142(c), concerning the Nonmunicipal  
25 Domestic Sewage Treatment Works Trust Fund, is amended to read as follows:

26 (c)(1) The fund shall be used by the ~~Arkansas Department~~ Division of  
27 Environmental Quality to ensure adequate operation, maintenance, and  
28 completed closure of a nonmunicipal domestic sewage treatment works if the  
29 Director of the ~~Arkansas Department~~ Division of Environmental Quality  
30 determines that an owner or operator has not adequately operated, maintained,  
31 or completed closure of the nonmunicipal domestic sewage treatment works.

32 (2) If the director determines that an owner or operator has not  
33 adequately operated, maintained, or completed closure of the nonmunicipal  
34 domestic sewage treatment works, the ~~department~~ division may use moneys in  
35 the fund to hire a third-party contractor to:

36 (A) Take remedial action, including without limitation

1 corrective action;

2 (B) Initiate or complete the closure of a nonmunicipal  
3 domestic sewage treatment works;

4 (C) Maintain and operate a nonmunicipal domestic sewage  
5 treatment works; or

6 (D) Take any other action the director determines to be  
7 necessary to carry out the purposes of this section and § 8-4-203(b).

8 (3) The fund may be used by the ~~Arkansas Department of~~  
9 ~~Environmental Quality~~ division to do the following:

10 (A) Provide reimbursement to a nonmunicipal domestic  
11 sewage treatment works under § 8-4-203(b);

12 (B) Provide technical support to nonmunicipal domestic  
13 sewage treatment works to promote adequate operation, maintenance, or  
14 completed closure of a facility; and

15 (C) Pay reasonable costs and expenses of the ~~department~~  
16 division for administering the Nonmunicipal Domestic Sewage Treatment Works  
17 Trust Fund.

18  
19 SECTION 691. Arkansas Code § 19-5-1148(b)(3)(C), concerning the Used  
20 Tire Recycling Fund, is amended to read as follows:

21 (C) Seven percent (7%) deducted from the proceeds of fees  
22 imposed under § 8-9-404 and deposited into the ~~Arkansas Department~~ Division  
23 of Environmental Quality Fee Trust Fund under § 8-9-404(b)(1)(B), § 8-9-  
24 404(c)(3)(A)(ii), and § 8-9-404(d)(7)(B).

25  
26 SECTION 692. Arkansas Code § 19-5-1148(c), concerning the Used Tire  
27 Recycling Fund, is amended to read as follows:

28 (c)(1) At least ninety percent (90%) of the moneys available in the  
29 Used Tire Recycling Fund each fiscal year shall be used by the ~~Arkansas~~  
30 ~~Department~~ Division of Environmental Quality to provide reimbursements to  
31 used tire programs, to administer the Used Tire Recycling and Accountability  
32 Program, and to perform other duties under the Used Tire Recycling and  
33 Accountability Act, § 8-9-401 et seq.

34 (2) The Director of the ~~Arkansas Department~~ Division of  
35 Environmental Quality may use not more than ten percent (10%) of the moneys  
36 available in the Used Tire Recycling Fund each fiscal year:

- 1 (A) For waste tire site abatement aid;  
2 (B) For the development, implementation, and maintenance  
3 of the electronic uniform used tire manifest system; and  
4 (C) To provide market and economic stimulus incentives.  
5

6 SECTION 693. The introductory language of Arkansas Code § 19-5-  
7 1217(b), concerning the Computer and Electronic Recycling Fund, is amended to  
8 read as follows:

9 (b) The fund shall be administered by the ~~Arkansas Department~~ Division  
10 of Environmental Quality and may be used to:  
11

12 SECTION 694. Arkansas Code § 19-5-1249(c), concerning the Alternative  
13 Motor Fuel Development Fund, is amended to read as follows:

14 (c) The fund shall be used by the ~~Arkansas Department~~ Division of  
15 Environmental Quality to provide rebates and incentives under the Arkansas  
16 Alternative Motor Fuel Development Act, § 15-10-901 et seq.  
17

18 SECTION 695. Arkansas Code § 19-6-301(104), concerning special  
19 revenues enumerated, is amended to read as follows:

20 (104) All ~~Arkansas Department~~ Division of Environmental Quality  
21 fees, unless otherwise provided by law, § 8-1-105, landfill operator license  
22 fees, § 8-6-909, and that portion of new tire waste tire fees, § 8-9-404;  
23

24 SECTION 696. Arkansas Code § 19-6-434 is amended to read as follows:  
25 19-6-434. Hazardous Waste Permit Fund.

26 The Hazardous Waste Permit Fund shall consist of those special revenues  
27 as specified in § 19-6-301(59) and (237) there to be used by the ~~Arkansas~~  
28 ~~Department~~ Division of Environmental Quality to ensure the proper  
29 administration and enforcement of §§ 8-7-201 – 8-7-226 and the Phase I  
30 Environmental Site Assessment Consultant Act, § 8-7-1301 et seq.  
31

32 SECTION 697. Arkansas Code § 19-6-452 is amended to read as follows:  
33 19-6-452. Asbestos Control Fund.

34 The Asbestos Control Fund shall consist of the special revenues  
35 specified in § 19-6-301(130) and any other revenues authorized by law, there  
36 to be used to administer and enforce a program for licensing contractors

1 engaged in the removal of friable asbestos materials from facilities by the  
2 ~~Arkansas Department~~ Division of Environmental Quality under §§ 20-27-1001 –  
3 20-27-1007.

4  
5 SECTION 698. Arkansas Code § 19-6-471 is amended to read as follows:  
6 19-6-471. Marketing Recyclables Program Fund.

7 The Marketing Recyclables Program Fund shall consist of those special  
8 revenues as specified in § 19-6-301(162), there to be used by the Compliance  
9 Advisory Panel for the Marketing Recyclables Program for the administration  
10 and performance of its duties, as administered by the ~~Arkansas Department~~  
11 Division of Environmental Quality under § 8-9-201 et seq.

12  
13 SECTION 699. Arkansas Code § 19-11-1207(a), concerning the  
14 administration of the Guaranteed Energy Cost Savings Act, is amended to read  
15 as follows:

16 (a) The Arkansas Energy Office of the ~~Arkansas Department~~ Division of  
17 Environmental Quality shall administer this subchapter.

18  
19 SECTION 700. Arkansas Code § 20-80-306 is amended to read as follows:  
20 20-80-302. Purpose.

21 (a) The purpose of this subchapter is to encourage nonprofit community  
22 action organizations which have been formed to provide basic and essential  
23 human services to low income and elderly citizens of Arkansas in the areas of  
24 health, transportation, housing, home repair and weatherization, aging  
25 programs and aging alternatives to institutionalization, developmental child  
26 care and enrichment, youth opportunity programs, ~~low-income home energy~~  
27 ~~assistance programs~~, and other related activities which the General Assembly  
28 recognizes as beneficial to a large number of Arkansas citizens.

29 (b) It is further the purpose of this subchapter to encourage and  
30 promote the operations and activities of community action agencies whether  
31 the activities are conducted by one (1) agency or by two (2) or more  
32 cooperating agencies.

33  
34 SECTION 701. Arkansas Code § 20-2-103(a)(2)(B)(iii), concerning the  
35 powers and duties of the Arkansas Minority Health Commission, is amended to  
36 read as follows:

1 (iii) The ~~Arkansas Department~~ Division of  
 2 Environmental Quality;

3  
 4 SECTION 702. Arkansas Code § 20-27-1001 is amended to read as follows:  
 5 20-27-1001. Purpose.

6 The purpose of this subchapter is to protect the public health and  
 7 safety and the environment and to qualify the ~~Arkansas Department~~ Division of  
 8 Environmental Quality to adopt, administer, and enforce a program for  
 9 licensing training providers involved with the training of regulated asbestos  
 10 professionals, for licensing asbestos abatement consultants and asbestos  
 11 abatement contractors, and for certifying air monitors, contractor-  
 12 supervisors, inspectors, management planners, project designers, and workers  
 13 involved with demolitions, renovations, and asbestos-response actions in  
 14 which regulated asbestos-containing materials are disturbed in accordance  
 15 with this subchapter, the Arkansas Water and Air Pollution Control Act, § 8-  
 16 4-101 et seq., and regulations issued pursuant thereto.

17  
 18 SECTION 703. Arkansas Code § 20-27-1003(6), concerning the definition  
 19 of "certificate" under the laws regarding removal of asbestos material, is  
 20 amended to read as follows:

21 (6) "Certificate" means a document issued by the ~~Arkansas~~  
 22 ~~Department~~ Division of Environmental Quality to any person certifying that  
 23 that person has satisfactorily completed asbestos training, examination, and  
 24 other requirements established by the ~~department~~ division to perform the  
 25 duties of the following:

- 26 (A) Air monitor;
- 27 (B) Contractor/supervisor;
- 28 (C) Inspector;
- 29 (D) Management planner;
- 30 (E) Project designer; and
- 31 (F) Worker;

32  
 33 SECTION 704. Arkansas Code § 20-27-1003(9) and (10), concerning the  
 34 definition of "department" and "director" under the laws regarding removal of  
 35 asbestos material, are repealed.

36 ~~(9) "Department" means the Arkansas Department of Environmental~~

1 Quality;

2 ~~(10) "Director" means the Director of the Arkansas Department of~~  
 3 ~~Environmental Quality;~~

4  
 5 SECTION 705. Arkansas Code § 20-27-1003(15), concerning the definition  
 6 of "license" under the laws regarding removal of asbestos material, is  
 7 amended to read as follows:

8 (15) "License" means a document issued by the ~~department~~  
 9 Division of Environmental Quality to an asbestos abatement contractor,  
 10 asbestos abatement consultant, or training provider who meets the criteria  
 11 for licensing as established by the ~~department~~ division;

12  
 13 SECTION 706. Arkansas Code § 20-27-1003(24), concerning the definition  
 14 of "training provider" under the laws regarding removal of asbestos material,  
 15 is amended to read as follows:

16 (24) "Training provider" means any person or other legal entity,  
 17 however organized, that conducts some or all of the training programs for  
 18 asbestos professional disciplines which are regulated by the ~~department~~  
 19 division; and

20  
 21 SECTION 707. The introductory language of Arkansas Code § 20-27-1004,  
 22 concerning the powers and duties of the Arkansas Department of Environmental  
 23 Quality, is amended to read as follows:

24 The ~~Arkansas Department~~ Division of Environmental Quality shall be  
 25 charged with the responsibility of administering and enforcing this  
 26 subchapter and is given and charged with the following powers and duties:

27  
 28 SECTION 708. Arkansas Code § 20-27-1005 is amended to read as follows:  
 29 20-27-1005. Procedures.

30 The procedures of the ~~Arkansas Department~~ Division of Environmental  
 31 Quality and the Arkansas Pollution Control and Ecology Commission for  
 32 issuance of rules and regulations, conduct of hearings, notice, power of  
 33 subpoena, review of action on licenses, right of appeal, presumptions,  
 34 finality of actions, and related matters shall be as provided in the Arkansas  
 35 Water and Air Pollution Control Act, § 8-4-101 et seq., including, but not  
 36 limited to, §§ 8-4-205, 8-4-210, 8-4-212 – 8-4-214, and 8-4-218 – 8-4-229.

1  
2 SECTION 709. Arkansas Code § 20-27-1006 is amended to read as follows:  
3 20-27-1006. License required – Exceptions.

4 (a) Any asbestos abatement consultant or asbestos abatement contractor  
5 shall obtain a license under this section from the ~~Arkansas Department~~  
6 Division of Environmental Quality prior to actively engaging in any asbestos  
7 demolition, renovation, or asbestos response action, and any training  
8 provider shall obtain a license under this section from the ~~department~~  
9 division ~~prior to~~ before actively engaging in any asbestos training as  
10 provided by this subchapter.

11 (b)(1) The application for license shall be made in the manner and  
12 form required by the ~~department~~ division. An application for license or  
13 renewal of a license shall be accompanied by proof of liability insurance  
14 coverage in the form and amount required by the ~~department~~ division and proof  
15 of training and examination as required by the ~~department~~ division.

16 (2) Training providers shall not be required to furnish proof of  
17 liability insurance coverage under subdivision (b)(1) of this section.

18 (c)(1) The ~~department~~ division shall license all applicants for  
19 licenses under this subchapter who satisfy the requirements of this  
20 subchapter.

21 (2) Licenses shall be valid for a period of one (1) year.

22 (3) Licenses shall be renewable upon application and upon  
23 satisfying the renewal requirements of the ~~department~~ division.

24 (d) State and federal governments and subdivisions thereof shall be  
25 exempt, except for training providers, from the license requirements of this  
26 section.

27  
28 SECTION 710. Arkansas Code § 20-27-1007(1), concerning prohibited  
29 actions regarding asbestos, is amended to read as follows:

30 (1) To conduct:

31 (A) Asbestos response actions, demolitions, or renovations  
32 without having first obtained a license from the ~~Arkansas Department~~ Division  
33 of Environmental Quality when acting as an asbestos abatement consultant or  
34 as an asbestos abatement contractor;

35 (B) Training without having first obtained a license from  
36 the ~~department~~ division when acting as an asbestos training provider; or

1 (C) Asbestos response actions, demolitions, or renovations  
2 without having first obtained certification from the ~~department~~ division when  
3 acting as a clearance air monitor, contractor/supervisor, inspector,  
4 management planner, project designer, or worker;

5  
6 SECTION 711. Arkansas Code § 20-27-1008(a), concerning the limitation  
7 on grant funds of the Asbestos Abatement Grant Program, is amended to read as  
8 follows:

9 (a) There is created within the ~~Arkansas Department~~ Division of  
10 Environmental Quality the Asbestos Abatement Grant Program, which shall be  
11 used to provide financial assistance to an eligible city or county to be used  
12 exclusively for the purpose of one (1) or more stabilization and abatement  
13 activities as provided in this subchapter.

14  
15 SECTION 712. Arkansas Code § 20-27-1009(a)(1), concerning grant  
16 eligibility and distribution of grant funds from the Asbestos Abatement Grant  
17 Program, is amended to read as follows:

18 (a)(1) A city or county with a population of less than fifty thousand  
19 (50,000) according to the most recent federal decennial census may apply to  
20 the ~~Arkansas Department~~ Division of Environmental Quality for grant funds to  
21 be used under this subchapter.

22  
23 SECTION 713. The introductory language of Arkansas Code § 20-27-  
24 1009(b), concerning grant eligibility and distribution of grant funds from  
25 the Asbestos Abatement Grant Program, is amended to read as follows:

26 (b) To be eligible to receive grant funds under this subchapter, a  
27 city or county shall certify the following information to the ~~department~~  
28 division in the form required by the ~~department~~ division for grant  
29 applications under this subchapter:

30  
31 SECTION 714. Arkansas Code § 20-27-1009(c), concerning grant  
32 eligibility and distribution of grant funds from the Asbestos Abatement Grant  
33 Program, is amended to read as follows:

34 (c) When the ~~department~~ division approves a grant application received  
35 under this section, the ~~department~~ division shall distribute grant funds  
36 based on the available moneys dedicated to the Asbestos Abatement Grant



1 Program in the Asbestos Control Fund according to procedures established by  
2 the Director of the ~~Arkansas Department~~ Division of Environmental Quality.

3  
4 SECTION 715. Arkansas Code § 20-27-1010(2), concerning costs eligible  
5 for Asbestos Abatement Grant Program funds, is amended to read as follows:

6 (2) If the ~~Arkansas Department~~ Division of Environmental Quality  
7 determines that an asbestos emergency exists that constitutes an immediate  
8 threat to human health or the environment, the costs associated with the  
9 stabilization and remediation of the emergency asbestos conditions.

10  
11 SECTION 716. The introductory language of Arkansas Code § 20-27-  
12 1011(a), concerning the grant requirements and the return of unused funds  
13 regarding the Asbestos Abatement Grant Program, is amended to read as  
14 follows:

15 (a) Within thirty (30) days of receiving grant funds under this  
16 subchapter, a city or county shall provide a report to the ~~Arkansas~~  
17 ~~Department~~ Division of Environmental Quality that includes the following:

18  
19 SECTION 717. Arkansas Code § 20-27-1011(b)(1) and (2), concerning the  
20 grant requirements and the return of unused funds regarding the Asbestos  
21 Abatement Grant Program, are amended to read as follows:

22 (1) Notify the ~~department~~ division of the date the city or  
23 county expects the stabilization and abatement activity to be complete; and

24 (2) Continue to report its progress to the ~~department~~ division  
25 every fourteen (14) days until the approved stabilization and abatement  
26 activity is complete and the requirements of this section are met.

27  
28 SECTION 718. Arkansas Code § 20-27-1011(c), concerning the grant  
29 requirements and the return of unused funds regarding the Asbestos Abatement  
30 Grant Program, is amended to read as follows:

31 (c)(1) A city or county that receives grant funds under this  
32 subchapter shall immediately return to the ~~department~~ division any unused  
33 portion of the grant funds when the stabilization and abatement activity is  
34 complete.

35 (2) The ~~department~~ division shall deposit any unused grant funds  
36 returned to the ~~department~~ division by a city or county under subdivision

1 (c)(1) of this section into the Asbestos Control Fund to be used exclusively  
2 for the Asbestos Abatement Grant Program.

3  
4 SECTION 719. Arkansas Code § 20-27-1103(1), concerning an exception  
5 for blasting conducted at a surface coal mine or if regulated by the Oil and  
6 Gas Commission, is amended to read as follows:

7 (1) Blasting conducted at a surface coal mine regulated by the  
8 ~~Arkansas Department~~ Division of Environmental Quality pursuant to the  
9 Arkansas Surface Coal Mining and Reclamation Act of 1979, § 15-58-101 et  
10 seq.; and

11  
12 SECTION 720. The introductory language of Arkansas Code § 22-3-  
13 2003(b)(1), concerning the Sustainable Energy-Efficient Buildings Program, is  
14 amended to read as follows:

15 (1) For public agencies, the Arkansas Energy Office of the  
16 ~~Arkansas Department~~ Division of Environmental Quality shall develop and:

17  
18 SECTION 721. The introductory language of Arkansas Code § 22-3-  
19 2006(a), concerning a program to manage the energy usage of public agencies,  
20 is amended to read as follows:

21 (a) The Arkansas Energy Office of the ~~Arkansas Department~~ Division of  
22 Environmental Quality shall:

23  
24 SECTION 722. The introductory language of Arkansas Code § 22-3-  
25 2006(b), concerning a program to manage the energy usage of public agencies,  
26 is amended to read as follows:

27 (b) To implement its plan, the Arkansas Energy Office of the ~~Arkansas~~  
28 ~~Department~~ Division of Environmental Quality shall to the extent funds are  
29 available:

30  
31 SECTION 723. The introductory language of Arkansas Code § 22-3-  
32 2006(c), concerning a program to manage the energy usage of public agencies,  
33 is amended to read as follows:

34 (c) The Arkansas Energy Office of the ~~Arkansas Department~~ Division of  
35 Environmental Quality may adopt architectural and engineering standards to  
36 implement this section.

1  
2 SECTION 724. Arkansas Code § 22-3-2007(4), concerning the application  
3 of energy conservation plans to historic and unique buildings, is amended to  
4 read as follows:

5 (4) A building that the Arkansas Energy Office of the ~~Arkansas~~  
6 ~~Department~~ Division of Environmental Quality has exempted from this  
7 subchapter because of its unique architectural characteristics or usage.

8  
9 SECTION 725. Arkansas Code § 22-3-2008 is amended to read as follows:  
10 22-3-2008. Advisory committee for the Arkansas Energy Office of the  
11 ~~Arkansas Department~~ Division of Environmental Quality.

12 (a)(1) The Director of the Arkansas Energy Office of the ~~Arkansas~~  
13 ~~Department~~ Division of Environmental Quality shall create and recommend  
14 members for a sustainable, energy-efficient building advisory committee  
15 composed of:

16 (A) Representatives from the design and construction  
17 industry who are involved in public works contracting;

18 (B) Persons from public agencies who are responsible for  
19 overseeing public works projects or for developing energy efficiency programs  
20 and policies; and

21 (C) Other persons that the Director of the Arkansas Energy  
22 Office of the ~~Arkansas Department~~ Division of Environmental Quality considers  
23 to have useful information.

24 (2)(A) The Director of the ~~Arkansas Department~~ Division of  
25 Environmental Quality shall approve the creation and membership  
26 recommendations under this section.

27 (B) The committee members shall serve at the pleasure of  
28 the Director of the ~~Arkansas Department~~ Division of Environmental Quality.

29 (b) The committee shall provide advice on the implementation of this  
30 subchapter, including without limitation recommendations regarding:

31 (1) An education and training process for persons who are  
32 involved in the implementation of this subchapter;

33 (2) An ongoing evaluation or feedback process to help the  
34 Arkansas Energy Office of the ~~Arkansas Department~~ Division of Environmental  
35 Quality to implement this section; and

36 (3) Water-deficiency requirements and energy-efficiency

1 requirements.

2  
3 SECTION 726. The introductory language of Arkansas Code § 22-3-  
4 2009(b), concerning regulations for energy conservation measures in public  
5 buildings by the Arkansas Pollution Control and Ecology Commission, is  
6 amended to read as follows:

7 (b) The Arkansas Energy Office of the ~~Arkansas Department~~ Division of  
8 Environmental Quality shall:

9  
10 SECTION 727. The introductory language of Arkansas Code § 22-3-  
11 2010(a), concerning a performance review and report by the Arkansas Energy  
12 Office of the Arkansas Department of Environmental Quality, is amended to  
13 read as follows:

14 (a) The Arkansas Energy Office of the ~~Arkansas Department~~ Division of  
15 Environmental Quality, to the extent funds are available, shall conduct a  
16 performance review of the Sustainable Energy-Efficient Buildings Program that  
17 includes at least the following:

18  
19 SECTION 728. Arkansas Code § 22-3-2011(c)(1), concerning the  
20 applicability of energy conservation in public buildings, is amended to read  
21 as follows:

22 (1) Preclude an institution of higher education from adopting  
23 the policies and technical guidelines for a major facility or a major  
24 renovation that are established by the Arkansas Energy Office of the ~~Arkansas~~  
25 ~~Department~~ Division of Environmental Quality under § 22-3-2003(b)(1); or

26  
27 SECTION 729. Arkansas Code § 22-5-804(a)(1)(E), concerning leases and  
28 permits issued by the Natural Resources Committee and the Arkansas State Game  
29 and Fish Commission, is amended to read as follows:

30 (E) The ~~Executive~~ Director of the Arkansas Natural  
31 Resources Commission;

32  
33 SECTION 730. Arkansas Code § 22-5-804(a)(1)(H) and (I), concerning  
34 leases and permits issued by the Natural Resources Committee and the Arkansas  
35 State Game and Fish Commission, are amended to read as follows:

36 (H) The ~~Director~~ Secretary of the Department of Parks,

1 Heritage, and Tourism;

2 (I) The Director of the ~~Arkansas Department~~ Division of  
3 Environmental Quality; and

4  
5 SECTION 731. Arkansas Code § 22-5-807(a), concerning the notice and  
6 recommendations from interested agencies regarding leases and permits, is  
7 amended to read as follows:

8 (a) When an application for a lease or permit is filed with the  
9 Commissioner of State Lands for the taking or production of any sand, gravel,  
10 oil, natural gas, casinghead gas, coal, or other minerals or the severance of  
11 any timber or logs from state-owned lands, the Commissioner of State Lands  
12 shall so notify the Arkansas Geological Survey, the Arkansas Natural  
13 Resources Commission, the Oil and Gas Commission, the Arkansas State Game and  
14 Fish Commission, the Department of Parks, Heritage, and Tourism, the ~~Arkansas~~  
15 ~~Department~~ Division of Environmental Quality, the Arkansas Forestry  
16 Commission, and any other appropriate state agency that has or may have a  
17 particular interest in the area proposed to be covered by the lease or  
18 permit.

19  
20 SECTION 732. Arkansas Code § 23-2-201, concerning the membership of  
21 the Arkansas Public Service Commission, is amended to add an additional  
22 subsection to read as follows: is amended to read as follows:

23 (f) The chair shall report to the Secretary of the Department of  
24 Energy and Environment.

25  
26 SECTION 733. Arkansas Code § 23-2-105 is amended to read as follows:

27 23-2-105. Employees generally.

28 The Department of Energy and Environment may employ on behalf of the  
29 Arkansas Public Service Commission ~~shall have power to employ during its~~  
30 ~~pleasure~~ ~~such~~ officers, examiners, experts, engineers, statisticians,  
31 accountants, attorneys, inspectors, clerks, and employees as it may deem  
32 necessary to carry out its proper function or to perform the duties and  
33 exercise the powers conferred by law upon the commission, as may be provided  
34 by appropriations of the General Assembly.

35  
36 SECTION 734. Arkansas Code § 23-2-106 is amended to read as follows:

1 23-2-106. Assistant general counsel.

2 There is established ~~in the Arkansas Public Service Commission~~ the  
3 positions of two (2) assistant general counsel who shall be well-trained  
4 attorneys to be employed by the Department of Energy and Environment on  
5 behalf of the Arkansas Public Service Commission.

6  
7 SECTION 735. Arkansas Code § 23-2-107 is amended to read as follows:

8 23-2-107. Commissioners and employees – Activities restricted.

9 (a) No person while serving as a member ~~or employee~~ of the Arkansas  
10 Public Service Commission, or an employee of the Department of Energy and  
11 Environment working for the Arkansas Public Service Commission, shall  
12 practice or represent clients before any other agency of this state which is  
13 engaged in the regulation of any business, profession, or trade.

14 (b) Nor shall any person while serving as a member ~~or employee~~ of the  
15 commission or an employee department represent any person, firm, corporation,  
16 or enterprise subject to the regulatory jurisdiction of the commission in any  
17 proceeding before any court or administrative body.

18  
19 SECTION 736. Arkansas Code § 23-2-108 is amended to read as follows:

20 23-2-108. Costs of operation and maintenance.

21 (a) All costs of operation and maintenance of the Arkansas Public  
22 Service Commission shall be paid by vouchered warrants drawn against the  
23 General Revenue Fund Account of the State Apportionment Fund in the State  
24 Treasury from appropriations made for these purposes by the General Assembly.

25 (b)(1) The ~~commission~~ Department of Energy and Environment shall  
26 designate one (1) of its officers or employees who is familiar with cost  
27 accounting methods to keep an accurate record of that part of the cost of  
28 operation and maintenance of the commission having to do with matters  
29 relating to the regulation of public utilities, such costs hereafter referred  
30 to as “utilities costs”.

31 (2) In a similar manner, that officer or employee shall keep an  
32 accurate record of that part of the cost of operation and maintenance of the  
33 commission having to do with all matters other than those relating to the  
34 regulation of public utilities.

35  
36 SECTION 737. Arkansas Code § 23-2-109 is amended to read as follows:

1 23-2-109. Expenses of commission.

2 All expenses incurred by the Arkansas Public Service Commission  
3 pursuant to the provisions of this act, including the actual and necessary  
4 traveling and other expenses and disbursements of the commissioners, ~~their~~  
5 ~~officers, and employees~~ incurred while on business of the commission, shall  
6 be paid from the funds provided for the use of the commission after being  
7 approved by the commission.

8  
9 SECTION 738. Arkansas Code § 23-2-110 is amended to read as follows:

10 23-2-110. Payment of expenses and salaries.

11 (a) The expenses of the Arkansas Public Service Commission shall be  
12 paid from the State Treasury on the warrant of the Auditor of State, and  
13 subject to the approval of the Secretary of the Department of Energy and  
14 Environment.

15 (b) The clerk of the commission shall make out an itemized account of  
16 all the expenses incurred by the commission, fees paid for officials for  
17 issuing and serving notices and process, witness fees, and any other expenses  
18 actually paid and which are authorized by this act.

19 (c) The account shall be examined by the commission and the secretary  
20 and approved by it if correct, and the account so approved shall be filed  
21 with the Auditor of State.

22 (d) The Auditor of State shall issue his or her warrant on the  
23 Treasurer of State for the amount of the account and deliver the warrant to  
24 the clerk of the commission, and the Treasurer of State is authorized to pay  
25 the warrant.

26  
27 SECTION 739. Arkansas Code § 23-2-111 is amended to read as follows:

28 23-2-111. Salaries and expenses – Time of payment.

29 (a) The salaries and expenses of the employees of the Department of  
30 Energy and Environment working on behalf of the Arkansas Public Service  
31 Commission shall be paid monthly upon certificate and vouchers, as required  
32 by law.

33 (b) If it becomes necessary to pay for transportation, costs, or other  
34 expenses of a similar nature during any current month, the payments may be  
35 drawn in advance upon certificate of the commissioners. However, the payments  
36 are to be embraced thereafter in the monthly statement to be made as required

1 by law, showing the expenses to have been paid.

2  
 3 SECTION 740. Arkansas Code § 23-2-112 is amended to read as follows:  
 4 23-2-112. Rural and Community Liaison – General job responsibilities.

5 (a) The Rural and Community Liaison will serve as a two-way  
 6 communication link between the Arkansas Public Service Commission and utility  
 7 customers in Arkansas, particularly those in rural areas.

8 (b)(1) The liaison is responsible for:

9 (A) Providing information to communities and rural utility  
 10 customers concerning utility matters within the jurisdiction of the  
 11 commission; and

12 (B) Identifying questions and concerns that rural utility  
 13 customers may have concerning utility issues and relaying those concerns to  
 14 the members of the commission and to the commission staff.

15 (2) In the performance of these duties, the liaison will work  
 16 with stakeholders in rural areas and communities, including legislators,  
 17 civic and community leaders, customers and customer groups, and rural utility  
 18 personnel.

19 (c) The liason shall be employed by the Secretary of the Department of  
 20 Energy and Environment.

21  
 22 SECTION 741. Arkansas Code § 23-2-304(a)(11)(A)(i), concerning the  
 23 powers and duties of the Arkansas Public Service Commission, is amended to  
 24 read as follows:

25 (11)(A)(i) Propose, develop, solicit, approve, require,  
 26 implement, and monitor financial assistance programs for utility customers  
 27 who are sixty-five (65) years of age or older or who meet the income  
 28 eligibility qualifications of the Low Income Home Energy Assistance Program  
 29 administered by the ~~Department of Human Services~~ Arkansas Energy Office of  
 30 the Department of Energy and Environment.

31  
 32 SECTION 742. Arkansas Code § 23-3-405(a)(1)(B), concerning the  
 33 authority of the Arkansas Public Service Commission for rate changes and  
 34 exemptions, is amended to read as follows:

35 (B) The commission is authorized to order, require, promote, or  
 36 engage in energy conservation programs and measures for the benefit of



1 utility customers who are sixty-five (65) years of age or older or who meet  
 2 the income eligibility qualifications for the Low Income Home Energy  
 3 Assistance Program administered by the ~~Department of Human Services~~ Arkansas  
 4 Energy Office of the Department of Energy and Environment.

5  
 6 SECTION 743. Arkansas Code § 23-18-506, is amended to read as follows:

7 23-18-506. ~~Arkansas Department~~ Division of Environmental Quality's and  
 8 Arkansas Pollution Control and Ecology Commission's jurisdiction unaffected  
 9 by subchapter.

10 (a) This subchapter does not affect the:

11 (1) Jurisdiction of the ~~Arkansas Department~~ Division of  
 12 Environmental Quality or the Arkansas Pollution Control and Ecology  
 13 Commission with respect to water and air pollution control or other matters  
 14 within the jurisdiction of the ~~department~~ division or the Arkansas Pollution  
 15 Control and Ecology Commission; and

16 (2) Requirement that a person apply for and obtain a permit from  
 17 the ~~department~~ division as provided by the Arkansas Water and Air Pollution  
 18 Control Act, §§ 8-4-101 – 8-4-106, 8-4-201 – 8-4-229, and 8-4-301 – 8-4-313.

19 (b) This subchapter does not confer upon the Arkansas Public Service  
 20 Commission any authority or jurisdiction conferred by law upon the ~~department~~  
 21 division or the Arkansas Pollution Control and Ecology Commission.

22 (c) Notwithstanding the exemption provisions of § 23-18-504, each  
 23 major utility facility constructed in Arkansas is subject to the  
 24 environmental rules and regulations of the state and federal regulatory  
 25 bodies having jurisdiction over the air, water, and other environmental  
 26 impacts associated with the major utility facility.

27  
 28 SECTION 744. Arkansas Code § 23-18-513(a)(7)(A), concerning service  
 29 and notice of an application for a certificate of environmental compatibility  
 30 and public need, is amended to read as follows:

31 (A) ~~Arkansas Department~~ Division of Environmental Quality;

32  
 33 SECTION 745. Arkansas Code § 23-18-526 is amended to read as follows:

34 23-18-526. Powers of local governments and state agencies.

35 Notwithstanding any other provision of law, no municipality, local  
 36 government unit, or state department or agency, except the ~~Arkansas~~

1 ~~Department~~ Division of Environmental Quality as set out in § 23-18-506, may  
 2 require any approval, consent, permit, certificate, or other condition for  
 3 the construction, operation, or maintenance of a major utility facility  
 4 authorized by a certificate issued pursuant to the provisions of this  
 5 subchapter. Nothing in this subchapter shall prevent the application of state  
 6 laws for the protection of employees engaged in the construction, operation,  
 7 or maintenance of the major utility facility.

8  
 9 SECTION 746. Arkansas Code § 23-112-614(c)(1), concerning auto auction  
 10 fees for salvage-titled or parts-only titled vehicles, is amended to read as  
 11 follows:

12 (1) Fifty percent (50%) for the ~~Arkansas Department~~ Division of  
 13 Environmental Quality to be used for inspection and oversight of auto  
 14 auctions to enforce all laws and rules administered by the ~~Arkansas~~  
 15 ~~Department~~ Division of Environmental Quality; and

16  
 17 SECTION 747. Arkansas Code § 25-1-119(c)(2)(B), concerning services  
 18 and studies regarding mortality disparities, is amended to read as follows:

19 (B) ~~Arkansas Department~~ Division of Environmental Quality;

20  
 21 SECTION 748. Arkansas Code § 25-1-119(d)(3), concerning services and  
 22 studies regarding mortality disparities, is amended to read as follows:

23 (3) The ~~Arkansas Department~~ Division of Environmental Quality;

24  
 25 SECTION 749. Arkansas Code § 25-1-120(c)(2)(C), concerning  
 26 comprehensive cross-sector collaboration, is amended to read as follows:

27 (C) The ~~Arkansas Department~~ Division of Environmental  
 28 Quality;

29  
 30 SECTION 750. Arkansas Code § 25-11-103 is amended to read as follows:

31 25-11-103. Funds transfer to the Weatherization Assistance Program.

32 The ~~Department of Human Services~~ Division of Environmental Quality  
 33 shall transfer annually to the ~~Arkansas Department of Environmental Quality~~  
 34 Arkansas Energy Office a minimum of fifteen percent (15%) and up to a maximum  
 35 of twenty-five percent (25%), as allowed by federal law or regulation, of the  
 36 annual allocation for the Low Income Home Energy Assistance Program to be

1 used by the Weatherization Assistance Program of the Arkansas Energy Office  
2 of the Arkansas Department Division of Environmental Quality.

3  
4 SECTION 751. Arkansas Code § 25-14-101 is repealed.

5 ~~25-14-101.—Creation—Director—Organization—Personnel.~~

6 ~~(a)—There is created the Arkansas Department of Environmental Quality.~~

7 ~~(b)—The executive head of the Arkansas Department of Environmental~~  
8 ~~Quality shall be the Director of the Arkansas Department of Environmental~~  
9 ~~Quality. The director shall:~~

10 ~~(1)—Be appointed by the Governor, with the consent of the~~  
11 ~~Senate;~~

12 ~~(2)—Be appointed after the Governor consults with the Arkansas~~  
13 ~~Pollution Control and Ecology Commission; and~~

14 ~~(3)—Serve at the pleasure of the Governor.~~

15 ~~(c)(1)—The Arkansas Department of Environmental Quality shall consist~~  
16 ~~of the divisions found in the Arkansas Pollution Control and Ecology~~  
17 ~~Commission as of July 1, 1971, and any other divisions which may be created~~  
18 ~~by law and placed under the Arkansas Department of Environmental Quality.~~

19 ~~(2)—There shall be created a new Division of Environmental~~  
20 ~~Preservation which shall be responsible for reviewing and making specific~~  
21 ~~ecologically oriented recommendations on all plans, programs, and projects of~~  
22 ~~all other state departments, divisions, agencies, and commissions and upon~~  
23 ~~all federal plans, programs, and projects affecting this state. To this end,~~  
24 ~~all other departments, divisions, agencies, and commissions within this state~~  
25 ~~are directed to cooperate with the Arkansas Department of Environmental~~  
26 ~~Quality in fulfilling the Arkansas Department of Environmental Quality's~~  
27 ~~responsibility defined in this chapter.~~

28 ~~(3)—Nothing in this subsection shall be construed to prevent the~~  
29 ~~director, with the advice and consent of the Governor and the commission,~~  
30 ~~from organizing the Arkansas Department of Environmental Quality into the~~  
31 ~~divisions and units which may be necessary to effectively and efficiently~~  
32 ~~administer the statutory responsibilities of the Arkansas Department of~~  
33 ~~Environmental Quality.~~

34 ~~(d)—The director, with the advice and consent of the Governor, shall~~  
35 ~~appoint the heads of the respective divisions. All of the personnel of the~~  
36 ~~Arkansas Department of Environmental Quality shall be employed by and serve at~~

1 ~~the pleasure of the director. Nothing in this section shall be so construed~~  
 2 ~~as to reduce any right which an employee in the Arkansas Department of~~  
 3 ~~Environmental Quality shall have under any civil service or merit system.~~

4 ~~(c) Each division of the Arkansas Department of Environmental Quality~~  
 5 ~~shall be under the direction, control, and supervision of the director. The~~  
 6 ~~director may delegate his or her functions, powers, and duties to various~~  
 7 ~~divisions of the Arkansas Department of Environmental Quality as he or she~~  
 8 ~~shall deem desirable and necessary for the effective and efficient operation~~  
 9 ~~of the Arkansas Department of Environmental Quality.~~

10  
 11 SECTION 752. The introductory language of Arkansas Code § 25-34-  
 12 109(b), concerning the Computer and Electronic Recycling Fund, is amended to  
 13 read as follows:

14 (b) The fund shall be administered by the ~~Arkansas Department~~ Division  
 15 of Environmental Quality and may be used to:

16  
 17 SECTION 753. Arkansas Code § 25-34-110(a), concerning the computer and  
 18 electronic equipment recycling grants, is amended to read as follows:

19 (a) Electronic equipment recycling grants must be awarded on the basis  
 20 of written grant-request proposals submitted to and approved by the ~~Arkansas~~  
 21 ~~Department~~ Division of Environmental Quality.

22  
 23 SECTION 754. Arkansas Code § 26-51-506(c)(2)(B)(vi) and (vii),  
 24 concerning the tax credit for waste reduction, reuse, or recycling equipment  
 25 and eligibility, are amended to read as follows:

26 (vi) ~~Beginning July 1, 2016, by~~ By July 15 of each  
 27 year, the public retirement system with possession and control of the tax  
 28 credits under this subdivision (c)(2)(B) shall provide notice to the  
 29 Department of Finance and Administration of the amount of tax credits,  
 30 including tax credits pending certification by the ~~Arkansas Department~~  
 31 Division of Environmental Quality, subject to the limitations in subdivision  
 32 (c)(2)(B)(iii) of this section, to be sold or transferred for value.

33 (vii) The State of Arkansas shall pay the purchase  
 34 price equal to eighty percent (80%) of the face value of all of the tax  
 35 credits included in the notice required in subdivision (c)(2)(B)(vi) of this  
 36 section on or before June 30 of the year following the year in which the

1 notice was provided for all tax credits certified by the ~~Arkansas Department~~  
2 Division of Environmental Quality by June 30 of the year following the year  
3 in which the notice was provided by warrant from the Economic Development  
4 Incentive Fund funded by a transfer from general revenue.

5  
6 SECTION 755. Arkansas Code § 26-51-506(c)(3)(D)(v) and (vi),  
7 concerning the tax credit for waste reduction, reuse, or recycling equipment  
8 and eligibility, are amended to read as follows:

9 (v) Beginning July 1, 2020, by July 15 of each year,  
10 the public retirement system with possession and control of the tax credits  
11 under this subdivision (c)(3)(D) shall provide notice to the Department of  
12 Finance and Administration of the amount of tax credits, including tax  
13 credits expected to receive certification during the fiscal year by the  
14 ~~Arkansas Department~~ Division of Environmental Quality, subject to the  
15 limitations in subdivision (c)(3)(D)(iii) of this section, to be sold or  
16 transferred for value.

17 (vi) The State of Arkansas shall pay the purchase  
18 price equal to eighty percent (80%) of the face value of all of the tax  
19 credits included in the notice required in subdivision (c)(3)(D)(v) of this  
20 section on or before June 30 of the calendar year following the calendar year  
21 in which the notice was provided for all tax credits certified by the  
22 ~~Arkansas Department~~ Division of Environmental Quality by June 30 of the  
23 calendar year following the calendar year in which the notice was provided by  
24 warrant from the Economic Development Incentive Fund funded by a transfer  
25 from general revenue.

26  
27 SECTION 756. The introductory language of Arkansas Code § 26-51-  
28 506(d), concerning the tax credit for waste reduction, reuse, or recycling  
29 equipment and eligibility, is amended to read as follows:

30 (d) To claim the benefits of this section, a taxpayer must obtain a  
31 certification from the Director of the ~~Arkansas Department~~ Division of  
32 Environmental Quality certifying to the Revenue Division of the Department of  
33 Finance and Administration that:

34  
35 SECTION 757. Arkansas Code § 26-51-506(f)(5), concerning the tax  
36 credit for waste reduction, reuse, or recycling equipment and eligibility, is

1 repealed.

2 ~~(5)(A) This subsection shall apply to all credits which are~~  
 3 ~~certified as a result of applications for certification filed with the~~  
 4 ~~Arkansas Department of Environmental Quality on or after July 1, 1993.~~

5 ~~(B) This subsection shall not apply to credits which are~~  
 6 ~~certified as a result of applications for certification filed with the~~  
 7 ~~Arkansas Department of Environmental Quality prior to July 1, 1993.~~

8 ~~(C) Taxpayers who file written notice and a project plan~~  
 9 ~~with the Arkansas Department of Environmental Quality prior to July 1, 1993,~~  
 10 ~~shall be deemed to have filed an application for certification for purposes~~  
 11 ~~of this subdivision (f)(5), provided that all the information necessary to~~  
 12 ~~complete the application for certification is provided to the Arkansas~~  
 13 ~~Department of Environmental Quality on or before December 31, 1993.~~

14  
 15 SECTION 758. Arkansas Code § 26-51-506(k)(1)(A), concerning the tax  
 16 credit for waste reduction, reuse, or recycling equipment and eligibility, is  
 17 amended to read as follows:

18 (k)(1)(A) The ~~Arkansas Department~~ Division of Environmental Quality  
 19 and the ~~division~~ Revenue Division of the Department of Finance and  
 20 Administration shall promulgate rules or regulations as are necessary to  
 21 administer this section.

22  
 23 SECTION 759. Arkansas Code § 26-51-511(a)(1)(B), concerning coal  
 24 mining, producing, and extracting, is amended to read as follows:

25 (B) A holder of a valid mining permit issued by the  
 26 ~~Arkansas Department~~ Division of Environmental Quality to allow surface or  
 27 highwall mining;

28  
 29 SECTION 760. The introductory language of Arkansas Code § 26-51-  
 30 1215(d)(2), concerning tax credits for waste reduction, reuse, or recycling  
 31 equipment, is amended to read as follows:

32 (2) Obtain a certification from the Director of the ~~Arkansas~~  
 33 ~~Department~~ Division of Environmental Quality certifying to the Revenue  
 34 Division of the Department of Finance and Administration that:

35  
 36 SECTION 761. Arkansas Code § 26-51-1503(3)(A)(v), concerning the

1 definition of "committee" under the Arkansas Private Wetland and Riparian  
2 Zone Creation, Restoration, and Conservation Tax Credits Act, is amended to  
3 read as follows:

4 (v) The ~~Arkansas Department~~ Division of  
5 Environmental Quality; and

6  
7 SECTION 762. Arkansas Code § 26-52-401(36), concerning various  
8 products and services exempted from certain taxes, is amended to read as  
9 follows:

10 (36) Gross receipts or gross proceeds derived from the sale of:

11 (A) Fuel packaging materials to a person engaged in the  
12 business of processing hazardous and nonhazardous waste materials into fuel  
13 products at a facility permitted by the ~~Arkansas Department~~ Division of  
14 Environmental Quality for hazardous waste treatment; and

15 (B) Machinery and equipment, including analytical  
16 equipment and chemicals used directly in processing and packaging of  
17 hazardous and nonhazardous waste materials into fuel products at a facility  
18 permitted by the ~~Arkansas Department~~ Division of Environmental Quality for  
19 hazardous waste treatment;

20  
21 SECTION 763. Arkansas Code § 27-101-405(a)(2), concerning the  
22 establishment of the Marine Sanitation Advisory Committee, is amended to read  
23 as follows:

24 (2) Two (2) members from the state at large to be appointed by  
25 the Governor after consulting with the Director of the Department of Health  
26 and the Director of the ~~Arkansas Department~~ Division of Environmental  
27 Quality; and

28  
29 SECTION 764. Arkansas Code § 27-101-410 is amended to read as follows:  
30 27-101-410. Cooperation with federal agencies.

31 The Department of Health, the ~~Arkansas Department~~ Division of  
32 Environmental Quality, and the Arkansas State Game and Fish Commission shall  
33 pursue cooperative agreements with all appropriate federal agencies to ensure  
34 the proper disposal of marine sewage in Arkansas.

35  
36 SECTION 765. EMERGENCY CLAUSE. It is found and determined by the

1 General Assembly of the State of Arkansas that this act revises the duties of  
2 certain state entities; that this act establishes new departments of the  
3 state; that these revisions impact the expenses and operations of state  
4 government; and that the provisions of this act should become effective at  
5 the beginning of the fiscal year to allow for implementation of the new  
6 provisions at the beginning of the fiscal year. Therefore, an emergency is  
7 declared to exist, and this act being necessary for the preservation of the  
8 public peace, health, and safety shall become effective on July 1, 2019.

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