

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

Act 369 of the Regular Session

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

# A Bill

HOUSE BILL 1424

4  
5 By: Representatives Webb, Reynolds  
6 By: Senator Glover

## For An Act To Be Entitled

10 AN ACT TO AMEND ARKANSAS CODE § 8-4-203 TO  
11 REQUIRE FINANCIAL ASSURANCE FOR THE CLOSURE OR  
12 RESTORATION OF PERMITTED SITES IN THE STATE OF  
13 ARKANSAS THAT LAND APPLY OR STORE FLUIDS  
14 GENERATED OR UTILIZED DURING EXPLORATION OR  
15 PRODUCTION PHASES OF OIL OR GAS OPERATIONS; AND  
16 FOR OTHER PURPOSES.

## Subtitle

18 AN ACT TO REQUIRE FINANCIAL ASSURANCE  
19 FOR LANDFARMS.  
20

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

24  
25 SECTION 1. Arkansas Code § 8-4-203(c) – (k), concerning permits  
26 generally, is amended to read as follows:

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

31 (ii) As used in this subsection “land application or  
32 storage of fluids generated or utilized during exploration or production  
33 phases of oil or gas operations” means land-farming through the controlled  
34 and repeated application of drilling fluids to a soil surface or the practice  
35 of receiving and storing said fluids from offsite for waste management.



1  
 2 (iii) Surface facilities associated with Class II  
 3 injection wells are specifically excluded from the requirements of this  
 4 subsection (c).

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

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

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

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

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

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

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

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

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

36 (E)(i) For new permits, the applicant shall submit to the

1 department for approval a detailed cost estimate to close and restore the  
2 facility based on the proposed operation and capacity of the facility from  
3 the date the permit is issued through the following October 1.

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

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

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

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

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

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

20 (iii) The permittee is responsible for ensuring that  
21 documentation of annual renewal is received by the department by its due  
22 date.

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

26 (A) Obtaining insurance that specifically covers closure  
27 and restoration costs;

28 (B) Obtaining a letter of credit;

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

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

31 (E) Combining any of the instruments in (c)(2)(A) – (D);

32 or

33 (F) Any other financial instrument approved by the  
34 director.

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

36 (A) Be posted to the benefit of the department;

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

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

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

13                   (5) The department is not responsible for the operation,  
 14 closure, or restoration of a facility regulated under this subsection.

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

20                   (2) The notice required by subdivision ~~(e)(1)~~ (d)(1) of this  
 21 section shall advise that any interested person may request a public hearing  
 22 on the permit application by giving the department a written request within  
 23 ten (10) days of the publication of the notice.

24                   ~~(3) Should a hearing be deemed necessary by the department or in~~  
 25 ~~the event the department~~ If the department determines that a hearing is  
 26 necessary or desires such a hearing, the department shall schedule a public  
 27 hearing and shall notify by first class mail the applicant and all persons  
 28 that have submitted comments of the date, time, and place of the public  
 29 hearing.

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

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

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

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

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

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

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

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

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

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

34 ~~(e)~~(f)(1) All costs of publication of notices of applications and  
 35 notices of proposals to grant permits under this section shall be the  
 36 responsibility of the applicant.

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

3 (3) Any moneys received pursuant to under subsection ~~(e)~~(f) of  
 4 this section shall be classified as refunds to expenditures.

5 ~~(f)~~(g) Only those persons that submit comments on the record during  
 6 the public comment period and the applicant shall have standing to appeal the  
 7 decision of the department to the Arkansas Pollution Control and Ecology  
 8 Commission.

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

15 (2) Only those reasons set out in §§ 8-1-106(b)(1) and ~~8-1-~~  
 16 ~~106(c)~~ shall constitute grounds for denial of a transfer.

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

20 ~~(h)~~(i) In the event of voluminous comments, ~~including, but not limited~~  
 21 ~~to~~ including without limitation a petition, the department may require the  
 22 designation of a representative to accept any notices required by this  
 23 section.

24 ~~(i)~~(j) The notice provisions of subsections ~~(e)~~(d) and ~~(d)~~(e) of this  
 25 section shall do not apply to permit transfers or minor modifications of  
 26 existing permits.

27 ~~(j)~~(k) This section in no way restricts local and county government  
 28 entities from enacting more stringent ordinances regulating nonmunicipal  
 29 domestic treatment sewage systems in Arkansas.

30 ~~(k)~~(l) The commission may promulgate rules to establish a permit-by-  
 31 rule. A permit-by-rule is subject to the public notice requirements and  
 32 procedural provisions under § 8-4-202 et seq., but is not subject to the  
 33 public notice requirements and procedural provisions under §§ 8-4-203 – 8-4-  
 34 205.

35  
 36 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the

1 General Assembly of the State of Arkansas that establishing financial  
2 assurance requirements for the closure of commercial facilities that engage  
3 in land application or storage of fluids generated or utilized during  
4 exploration or production phases of oil or gas operations is necessary to  
5 protect human health and the environment and that a delay in the effective  
6 date of this Act may result in harm to human health or the environment.  
7 Therefore, an emergency is declared to exist and this Act being necessary for  
8 the immediate preservation of the public peace, health, and safety shall be  
9 in full force and effect from and after the date of its passage or approval.  
10 If the bill is neither approved nor vetoed by the Governor, it shall become  
11 effective on the expiration of the period of time during which the Governor  
12 may veto the bill. If the bill is vetoed by the Governor and the veto is  
13 overridden, it shall become effective on the date the last house overrides  
14 the veto.

15  
16 **APPROVED: 3/10/2009**  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36