

# HOUSE AMENDMENT 1 TO hb2229.

by deleting line 5 on page 1 and substituting the following:

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

AND

inserting the following new sections after SECTION 1:

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

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

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

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

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

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

8-1-201. Legislative intent.

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

(b) Further, in delineating the responsibility between the ~~Department of Pollution Control and Ecology~~ and the Arkansas Pollution Control and Ecology Commission, it is the intent of the General Assembly neither to expand nor to diminish any rights of property

owners of this state under Article 2, § 22 of the Constitution of the State of Arkansas.

SECTION 5. Selected provision of Title 8, Chapter 4, Subchapter 2 are amended to read as follows:

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

(a) The Arkansas ~~Department of~~ Pollution Control and Ecology ~~Commission, or its successor,~~ is given and charged with the following powers and duties:

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

(2) INVESTIGATIONS AND SURVEYS.

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

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

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

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

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

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

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

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

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

(A) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than federal requirements, the Commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State

of Arkansas, including those entities that will be subject to the regulation.

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

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

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

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

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

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

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

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

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

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

8-4-202. Rules and regulations.

(a) The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules and regulations implementing or effectuating the powers and duties of the department and the Commission under this chapter.

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

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

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

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

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

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

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

(d) (1) Prior to the adoption, amendment, or repeal of any rule or regulation or prior to suspending the processing of a type or category of permits or the declaration of a moratorium on a type or category of permits, the Commission shall give at least ~~twenty~~ thirty (30) days' notice of its intended action. The notice shall include a statement of the substance of the intended action, a description of the subjects and issues involved, and the time, place, and manner in which interested persons may make comments. The notice shall be mailed to all persons who have requested advance notice of rulemaking proceedings. The notice shall also be published at least twice in newspapers having a general statewide circulation and in the appropriate industry, trade, or professional publications the Commission may select.

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

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

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

(A) (i) A copy of all notices described in subsection (d) of this section, and a concise general statement of the basis and purpose of the proposed rule, which shall include a written explanation of the necessity of the regulation and a demonstration that

any technical regulation or technical standard is based on generally accepted scientific knowledge and engineering practices.

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

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

(B) Copies of all written material, photographs, published materials, electronic media, and the record of all oral comments received by the Commission during the public comment period and hearings;

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

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

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

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

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

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

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

8-4-203. Permits generally.

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

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

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

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

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

(4) [Repealed.]

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

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

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

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

(d) (1) All costs of publication of notice under this section shall be paid by the department with reimbursement by the applicant to be made to the department prior to the issuance of the final permit.

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

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

(f) (1) Permits for the discharge of pollutants to the waters of the state or for

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

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

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

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

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

#### 8-4-204. Permits – Revocation.

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

(1) Violation of any condition of the permit;

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

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

#### 8-4-210. ~~Investigations and~~ Adjudicatory hearings generally.

~~— (a) The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to conduct such investigations and hold such hearings as it may deem advisable and necessary for the discharge of its duties under this chapter and to authorize any member, employee, or agent appointed by it to conduct such investigations or hold such hearings.~~

(a) The Arkansas Commission on Pollution Control and Ecology is authorized to conduct such adjudicatory hearings as are compelled by this Chapter to provide an aggrieved person a forum for contesting any permitting or enforcement decision of the department. For the purposes of this section, the Commission's jurisdiction shall be construed as including all regulatory programs vested with the department.

(b) In any such hearing or investigation, any member of the Commission's hearing officer or any employee or agent thereto authorized by the Commission may administer oaths, examine witnesses, and issue, in the name of the Commission, subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearing or investigation.

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

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

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

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

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

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

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

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

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

8-4-212. Adjudicatory Orders — Hearings and Orders.

(a) No order ~~of general application~~ shall be issued until the Arkansas Pollution Control and Ecology Commission or its ~~authorized officer, member, or agent~~ hearing officer shall have held a public adjudicatory hearing upon the matter therein involved.

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

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

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

(e) Any order of general applicability shall be processed as a rule making subject to the provisions of A.C.A. §8-4-202.

8-4-215. Intergovernmental cooperation.



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

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

(c) The Department of Pollution Control and Ecology, or its successor, may enter into agreements with the responsible authorities of the United States or other states, subject to approval by the Governor, relative to policies, methods, means, and procedures to be employed to control pollution of any interstate waters and may carry out these agreements by appropriate general and special orders. This power shall not be deemed to extend to the modification of any agreement with any other state concluded by direct legislative act. However, unless otherwise provided, the department shall be the agency for the administration and enforcement of any such legislative agreement.

8-4-217. Unlawful actions.

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

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

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

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

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

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

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

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

(i) A detergent:

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

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

- (c) Used by industry for metal cleaning or reconditioning;
  - (d) Manufactured, stored, or distributed for use or sale outside the state;
  - (e) Used in any laboratory, including a biological laboratory, research facility, chemical laboratory, and engineering laboratory;
  - (f) Used in a commercial laundry that provides laundry services for a hospital, health care facility, or veterinary hospital; or
  - (g) Used for surface cleaning, appliance cleaning, or specialty home cleaning, and not for dishwashing or laundry;
  - (ii) A phosphoric acid product, including a sanitizer, brightener, acid cleaner, or metal conditioner; and
  - (iii) A substance the department excludes from the phosphorus limitations of this section based on a finding that compliance with this section would:
    - (a) Create a significant hardship on the user; or
    - (b) Be unreasonable because of the lack of an adequate substitute cleaning agent that could be substituted for the subject cleaning agent without significant cost or effect differences;
  - (B) A person may use, sell, manufacture, or distribute for use or sale a laundry detergent that contains one-half percent (.5%) phosphorus or less that is incidental to manufacturing; and
  - (C) A person may use, sell, manufacture, or distribute for use or sale a dishwashing detergent that contains eight and seven-tenths percent (8.7%) phosphorus or less by weight.
- (b) (1) It shall be unlawful for any person to engage in any of the following acts without having first obtained a written permit from the ~~Commission~~ department:
- (A) To construct, install, modify, or operate any disposal system or any part thereof, or any extension or addition thereto, that will discharge into any of the waters of this state; or
  - (B) To increase in volume or strength any sewage, industrial waste, or other wastes in excess of the permissive discharges specified under any existing permit; or
  - (C) To construct, install, or operate any building, plant, works, establishment, or facility, or any extension or modification thereof, or addition thereto, the operation of which would result in discharge of any wastes into the waters of this state or would otherwise alter the physical, chemical, or biological properties of any waters of this state in any manner not already lawfully authorized; or
  - (D) To construct or use any new outlet for the discharge of any wastes into the waters of this state; or
  - (E) To discharge sewage, industrial waste, or other wastes into any of the waters of this state.
- (2) The ~~Commission~~ department may require the submission of such plans, specifications, and other information as it deems relevant in connection with the issuance

of disposal permits.

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

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

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

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

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

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

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

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

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

(a) When the Arkansas Department of Pollution Control and Ecology ~~Commission, or its successor,~~ finds that an emergency exists requiring immediate action to protect the public health or welfare, it may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as it deems necessary to meet the emergency.

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

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

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

8-4-223 Appeals -- Notice.

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

involved is situated.

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

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

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

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

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

(a) (1) Within thirty (30) days after service ~~and filing~~ of the notice of appeal, ~~on the commission secretary, through its director shall make, certify, and the commission shall~~ file with the clerk of the circuit court having jurisdiction of the appeal a ~~return~~ response ~~comprised of a copy of any application, petition, or other material paper whereon the action of the commission appealed from was based; a copy of the order, rule, regulation, or decision appealed from; all testimony, exhibits, and other evidence submitted to the commission; a statement of any findings of fact or rulings or conclusions of law made by the commission in the matter; and such other statements, admissions, or denials upon questions of law or fact raised by the appeal as the commission may deem pertinent~~ response to the notice of appeal and the record upon which the final order, rule, regulation, or other final determination complained of was entered.

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

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

(4) A response to the notice of appeal filed by the commission shall consist of any statements, admissions, or denials upon the questions of law or fact raised in the

notice of appeal as the commission may deem pertinent.

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

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

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

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

(a) The appeal shall be heard and determined by the court upon the issues raised by the notice of appeal and ~~return~~ response according to the rules relating to the trial of civil actions, so far as applicable.

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

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

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

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

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

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

\_8-4-303. Definitions.

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

- (1) "Air contaminant" means any solid, liquid, gas, or vapor or any combination

thereof;

(2) "Air pollution" means the presence in the outdoor atmosphere of one (1) or more air contaminants in quantities, of characteristics, and of a duration which are materially injurious, or can be reasonably expected to become materially injurious to human, plant, or animal life or to property, or which unreasonably interfere with enjoyment of life or use of property throughout the state or throughout the area of the state as shall be affected thereby;

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

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

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

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

(7) "Commission" means the Arkansas Pollution Control and Ecology Commission;

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

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

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

8-4-307. Private rights unchanged.

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

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

8-4-308. Industrial secrets confidential.

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

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

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

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

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

8-4-309. Construction limited - Exception.

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

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

8-4-310. Unlawful actions.

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

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

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

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

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

8-4-311. Powers generally.

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

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

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

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

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

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

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

(7) Administer and enforce all laws and regulations relating to pollution of the air;

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

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

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

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

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

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

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

(b) The Arkansas Commission on Pollution Control and Ecology shall have the power



to:

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) (A) Adopt, after notice and public hearing, reasonable and nondiscriminatory rules and regulations, including requiring a permit or other regulatory authorization from the department, before any equipment causing the issuance of air contaminants may be built, erected, altered, replaced, used, or operated, except in the case of repairs or maintenance of equipment for which a permit has been previously used, and revoke or modify

any permit issued under this chapter or deny any permit when it is necessary, in the opinion of the department, to prevent, control, or abate air pollution.

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

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

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

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

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

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

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

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

(B) The Commission may consider differential valuation of emission credits as necessary to achieve primary and secondary national ambient air quality standards, and may consider establishing credits for air pollutants other than those designated as criteria air pollutants by the federal Environmental Protection Agency.

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

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

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

- (1) The quantity and characteristics of air contaminants and the duration of their presence in the atmosphere which may cause air pollution in a particular area of the state;
- (2) Existing physical conditions and topography;
- (3) Prevailing wind directions and velocities;
- (4) Temperatures and temperature-inversion periods, humidity, and other atmospheric conditions;
- (5) Possible chemical reactions between air contaminants or between such air contaminants and air gases, moisture, or sunlight;
- (6) The predominant character of development of the area of the state such as residential, highly-developed industrial, commercial, or other characteristics;
- (7) Availability of air-cleaning devices;
- (8) Economic feasibility of air-cleaning devices;
- (9) Effect on normal human health of particular air contaminants;
- (10) Effect on efficiency of industrial operation resulting from use of air-cleaning devices;
- (11) The extent of danger to property in the area reasonably to be expected from any particular air contaminant;
- (12) Interference with reasonable enjoyment of life by persons in the area and conduct of established enterprises which can reasonably be expected from air contaminants;
- (13) The volume of air contaminants emitted from a particular class of air contamination sources;
- (14) The economic and industrial development of the state and the social and economic value of the air contamination sources;
- (15) The maintenance of public enjoyment of the state's natural resources; and
- (16) Other factors which the department or Commission may find applicable.

8-4-313. Variance from regulations.

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

(2) Variances may be limited in time.

(3) In determining whether or not a variance shall be granted, the Commission shall weigh the equities involved and the relative advantages and disadvantages to the residents

and the occupation and activity affected.

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

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

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

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

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

(2) The notice shall be served upon all persons, known to the Commission, who will be subjected to greater restrictions if the variance is revoked or modified, who are likely to be affected, or who have filed with the Commission a written request for such notification.

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

8-5-201. Definitions.

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

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission or its successor;

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

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

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

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

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

8-5-202. Penalty and injunctions.

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

(b) Any violation of this subchapter shall be subject to injunction proceedings brought by the ~~Arkansas Pollution Control and Ecology Commission~~ department in a court of competent jurisdiction.

8-5-203. Unlawful actions.

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

8-5-204. Licensing committee.

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

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

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

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

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

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

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

(c) (1) State agency members of the licensing committee shall receive no additional salary or per diem for their services as members of the committee, but they shall be allowed their travel and maintenance expenses while attending meetings away from Little Rock.

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

8-5-205. Powers and duties generally.

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

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

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

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

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

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

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

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

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

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

8-5-206. Classification of treatment plants.

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

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

8-5-207. Operators to be licensed.

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

8-5-208. License requirements.

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

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

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

8-5-209. Fees.

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

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

SECTION 8. Selected provisions of Title 8, Chapter 5, Subchapter 5, are amended as follows:

8-5-501. Regulation of systems generally.

(a) (1) The Arkansas Pollution Control and Ecology Commission and the Oil and Gas Commission are empowered to establish reasonable rules, regulations, and specifications for the establishment and operation of underground salt water disposal systems to be used in disposing of salt water produced in the production of oil.

(2) (A) Any person wishing to establish an approved underground salt water disposal system shall make applications to the ~~commissions~~ Oil and Gas Commission and the Arkansas Department of Pollution Control & Ecology, or its successor, for a permit to construct and operate the system for the purpose of obtaining the benefits of the provisions of this section and 8-5-502, 26-58-201 - 26-58-204, 26-58-206 - 26-58-210, and 26-58-211 [repealed].

(B) The application shall include:

(i) A description of the underground salt water disposal system that is to be established;

(ii) The plans and specifications thereof;

(iii) The location of the system and the number and location of the salt water producing oil wells to be served by the system;

(iv) The name of each oil producer to be served;

(v) A description of the underground level or strata into which the salt water is to be injected; and

(vi) Such other information as may be required by rules and regulations of the respective commissions.

(b) (1) If the ~~commissions~~ appropriate agency determines that the underground salt water disposal system for which application is made will meet the requirements of this section and §§ 8-5-502, 26-58-201 - 26-58-204, 26-58-206 - 26-58-210, and 26-58-211 [repealed] and the rules and regulations of the commissions, a permit for the establishment of the system shall be issued.

(2) (A) Upon the completion of the underground salt water disposal system, the ~~Commission~~ agency granting the permit provided for in this section shall cause an inspection of the system to be made.

(B) (i) If the ~~Commission~~ agency determines that the system is in compliance with the requirements of this section and §§ 8-5-502, 26-58-201 - 26-58-204, 26-58-206 - 26-58-210, and 26-58-211 [repealed] and the rules and regulations of the Commission, a certificate of approval of the system shall be granted.

(ii) The certificate of approval shall be signed by the chairman and secretary of the ~~Commission~~ Oil and Gas Commission or the Director of the Department of Pollution Control & Ecology.

(iii) Copies of the certificate of approval shall be furnished, upon application



therefor, to each oil producer who disposes of salt water through such approved underground salt water disposal system.

(3) (A) The ~~Commission~~ agency granting the certificate of approval shall, from time to time, inspect the approved underground salt water disposal system.

(B) (i) If a determination is made that the system is being operated in a manner contrary to the provisions of this section and §§ 8-5-502, 26-58-201 - 26-58-204, 26-58-206 - 26-58-210, and 26-58-211 [repealed], or the rules and regulations of the Commission, the ~~Commission~~ agency may revoke the certificate of approval until such time as a showing may be made that the deficiencies in the system have been corrected to the satisfaction of the Commission or department.

(ii) No oil producer shall be entitled to the benefits of the provisions of this section and §§ 8-5-502, 26-58-201 - 26-58-204, 26-58-206 - 26-58-210, and 26-58-211 [repealed] during the period in which the certificate of approval is revoked.

8-5-503. Denial of tax deductions.

(a) Should any individual, partnership, corporation or employee willfully or negligently cause, let, or permit salt water to flow, seep, or otherwise escape from the leased premises, the rights of the party will be denied tax deductions under §§ 8-5-501, 8-5-502, 26-58-201 - 26-58-204, 26-58-206 - 26-58-210, and 26-58-211 [repealed] for a period of twelve (12) months.

(b) (1) Any individual can file a complaint before the Arkansas Pollution Control and Ecology Commission against anyone for violations of this section and secure a hearing.

(2) (A) If the Commission should find that the accused has violated this section, then the violator shall be denied any tax exemption for a period of one (1) year.

(B) Any violation of this section during the period of the suspension shall extend the suspension one (1) year from the date of the last violation.

8-5-504. Chlorides standard.

Should the water of any stream of this state have more than two hundred fifty (250) parts per million of chlorides, then the Arkansas ~~Pollution Control and Ecology Commission~~ Department of Pollution Control & Ecology, or its successor, shall seek to learn of the source of the pollution and take steps to eliminate the source of pollution.\_

SECTION 9. Selected provisions of Title 8, Chapter 6, Subchapter 2, are amended to read as follows:

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

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

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

(2) To advise, consult, and cooperate with appropriate federal, state, interstate, and local units of government and with affected groups and industries in the formulation

of plans and the implementation of a solid waste management program pursuant to this subchapter;

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

(4) To develop a statewide solid waste management plan in cooperation with municipal and county governments and solid waste boards, giving emphasis to regional planning where feasible;

~~———— (5) To adopt, after notice and public hearing, and to promulgate, modify, repeal, and enforce rules and regulations for the source reduction, minimization, recycling, collection, transportation, processing, storage, and disposal of solid wastes including, but not limited to, the disposal site location and the construction, operation, and maintenance of the disposal site or disposal process as necessary or appropriate to implement or effectuate the purposes and intent of this subchapter and the powers and duties of the Commission under this subchapter;~~

~~———— (6) (5) To require to be submitted and to approve plans and specifications for the construction and operation of solid waste disposal facilities and sites and to inspect the construction and operation thereof;~~

~~———— (7) (6) To issue, continue in effect, revoke, modify, or deny, under such conditions as it may prescribe, permits for the establishment, construction, operation, or maintenance of solid waste management systems, disposal sites, and facilities;~~

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

~~———— (9) (8) To make, issue, modify, revoke, and enforce orders, after notice and opportunity for adjudicatory review by the Commission ~~hearing~~, prohibiting violation of any of the provisions of this subchapter or of any rules and regulations issued pursuant to it, and to require the taking of such remedial measures for solid waste disposal as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter;~~

~~———— (10) (9) To institute proceedings in the name of the Commission department in any court of competent jurisdiction to compel compliance with, and to restrain any violation of, the provisions of this subchapter or any rules, regulations, and orders issued pursuant thereto, and to require the taking of such remedial measures for solid waste disposal as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter;~~

~~———— (11) (10) To initiate, conduct, and support research, demonstration projects, and investigations and to coordinate all state agency research programs pertaining to solid waste disposal and management systems;~~

~~———— (12) To establish policies and standards for effective solid waste disposal and management systems;~~

~~———— (13) To establish standards and procedures for the certification of personnel to operate solid waste disposal systems or any part of a system;~~

~~———— (14) (11) To require the department to make periodic inspections not less than quarterly in accordance with regulations promulgated by the Commission of all solid waste disposal facilities or sites permitted under this subchapter to ensure compliance with all requirements of this subchapter and the regulations promulgated under this subchapter and to make final inspection of closed or abandoned solid waste disposal sites to determine compliance with rules and regulations for proper closure and proper filling and drainage of the site;~~

~~———— (15) (12) To issue, continue in effect, revoke, modify, or deny, under such conditions as it may prescribe, permits for the establishment, construction, operation, or maintenance of transfer stations;~~

~~———— (16) (13) To regulate and license persons engaged in the business of transporting used and waste tires;~~

~~———— (17) (14) To establish minimum standards for the operation of a solid waste collection system; and~~

~~———— (18) (15) Upon the petition of a solid waste board or upon ~~the Commission's~~ its own motion initiative, to revoke, modify, or deny a permit for a solid waste disposal facility or a permit for any other element of a solid waste management system based on noncompliance with an approved regional solid waste management plan of a solid waste board.~~

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

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

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

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

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

(D) Upon completion of the public comment period, the Commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the

relative impact and benefits of the more stringent regulation;

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

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

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

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

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

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

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

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

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

SECTION 10. Selected provisions of Title 8, Chapter 7, Subchapter 2, are amended to read as follows:

\_8-7-203. Definitions.

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

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

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

(3) "Commission" means the Arkansas Pollution Control and Ecology Commission;

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

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

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

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

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

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

(8) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transport;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~—— (6) (5) To issue, continue in effect, revoke, modify, or deny, under such conditions~~

as it may prescribe, permits for the transportation of hazardous waste and the establishment, construction, operation, or maintenance of hazardous waste treatment, storage, or disposal facilities or sites, as more particularly prescribed by §§ 8-7-215 - 8-7-222;

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

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

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

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

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

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

———~~(b)~~ (12) In addition to the powers enumerated ~~in subsection (a) of this section above~~, the department shall have and may use in the administration and enforcement of this subchapter all of the powers which it has under other laws administered by it, including the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., and the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

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

(1) To adopt, after notice and public hearing, and to promulgate, modify, repeal,

and enforce rules and regulations regarding hazardous waste management as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter and the powers and duties of the department under it including, but not limited to, rules and regulations for:

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

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

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

(D) The reporting of hazardous waste management activities;

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

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

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

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

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

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

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

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

(5) In the case of permitting or grants decisions, providing the right to appeal a



permitting or grants decision rendered by the director or his delegatee;

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

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

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

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

8-7-226. Fees - Fund established.

(a) The ~~department~~ Commission shall have authority to establish by regulation a schedule of fees to recover the costs of processing permit applications and permit renewal proceedings, on-site inspections and monitoring, the certification of personnel to operate hazardous waste treatment, storage, or disposal facilities, and other activities of department personnel which are reasonably necessary to assure that generators and transporters of hazardous waste and hazardous waste management facilities are complying with the provisions of this subchapter, and which reasonably should be borne by the transporter, generator, or owner or operator of the hazardous waste management facility.

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

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

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

SECTION 11. This Act shall not be construed as impairing the continued effectiveness of any regulations or orders promulgated or issued by the Arkansas Pollution Control & Ecology Commission prior to the effective date of this Act. Nor shall this Act be construed as extinguishing or otherwise affecting the unexpired terms of any current members of the Arkansas Pollution Control and Ecology Commission."

AND

by appropriately renumbering subsequent sections.

