

Hall of the House of Representatives

90th General Assembly - Regular Session, 2015

Amendment Form

Subtitle of House Bill No. 1314

TO AMEND THE LAWS CONCERNING NONMUNICIPAL DOMESTIC SEWAGE TREATMENT WORKS;
AND TO REPEAL THE FINANCIAL ASSURANCE REQUIREMENTS FOR NONMUNICIPAL DOMESTIC
SEWAGE TREATMENT WORKS.

Amendment No. 1 to House Bill No. 1314

Amend House Bill No. 1314 as originally introduced:

Page 1, delete lines 12 and 13, and substitute the following:

"DOMESTIC SEWAGE TREATMENT WORKS; TO CREATE THE NONMUNICIPAL DOMESTIC SEWAGE
TREATMENT TRUST FUND; AND FOR OTHER PURPOSES."

AND

Immediately after the enacting clause, add an additional section to read as
follows:

"SECTION 1. DO NOT CODIFY. Legislative findings.

The General Assembly finds that:

(1) The existing financial assurance requirements for nonmunicipal
domestic sewage treatment works that are in place to ensure that funding is
available to properly operate these sewage treatment systems for the
permitted term can create hardships for those facilities that cannot secure
readily available and affordable financial assurance mechanisms;

(2) In lieu of each permit applicant and each owner or operator of a
nonmunicipal domestic sewage treatment works providing individual financial
assurance to the Arkansas Department of Environmental Quality, the need for
financial assurance for nonmunicipal domestic sewage treatment facilities may
be met through the creation of a trust fund to be funded jointly by the
nonmunicipal domestic wastewater treatment facilities permitted to operate in
Arkansas; and

(3) The total funding for the trust fund is anticipated to be
approximately ten percent (10%) of the total amount currently required to be
assured by individual permittees."

AND

Page 1, delete lines 26 through 36, and substitute the following:

"SECTION 2. Arkansas Code § 8-4-203(b), as amended by Section 1 of Act
94 of 2015 and concerning water pollution permits, is amended to read as



follows:

(b)(1)(A)~~(i)~~ The department shall not issue, modify, renew, or transfer a National Pollutant Discharge Elimination System permit or state permit for a nonmunicipal domestic sewage treatment works without the permit applicant first ~~demonstrating to the department its financial ability to cover the estimated costs of operating and maintaining the nonmunicipal domestic sewage treatment works for a minimum period of five (5) years~~ paying the trust fund contribution fee required under subdivision (b)(2) of this section.

~~(ii)~~ (B) As used in this section, "nonmunicipal domestic sewage treatment works" means a device or system operated by an entity other than a city, town, county, or sewer improvement district that treats, in whole or in part, waste or wastewater from humans or household operations and must continuously operate to protect human health and the environment despite a permittee's failure to maintain or operate the device or system.

~~(iii)~~ (C) ~~State or federal facilities, schools, universities, and colleges~~ The following are specifically exempted from the requirements of this section:

- (i) State or federal facilities;
- (ii) Schools;
- (iii) Universities and colleges; and
- (iv) Entities that continuously operate due to a connection with a city, town, county, or sewer improvement district."

AND

Page 2, delete lines 1 through 6

AND

Page 6, delete lines 4 through 36, and substitute the following:

~~"(10) The~~ (2) Until January 1, 2016, the department may reduce or waive the amount of the required financial assurance if the permit applicant can demonstrate to the department's satisfaction that:

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

- (i) Maintained the nonmunicipal domestic sewage treatment works in continuous operation;
- (ii) Maintained the nonmunicipal domestic sewage treatment works in substantial compliance with the existing discharge permit issued by the department, which shall be demonstrated by submitting the following:

- (a) All discharge monitoring reports;
- (b) Evidence that the nonmunicipal domestic sewage treatment works has not exceeded the same permit effluent criteria in any two (2) consecutive monitoring periods during the previous three (3) years;

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

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

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

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

(1) The nonmunicipal domestic sewage treatment works' federal tax returns for the five (5) years preceding the application for a renewal permit and a sworn affidavit from a corporate official or other responsible official representing the nonmunicipal domestic sewage treatment works that lists all assets and liabilities for the nonmunicipal domestic sewage treatment works; or

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

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

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

(B) For a new permit:

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

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

~~(11)~~ (3) The department may withdraw a reduction or waiver granted under this subsection at any time ~~in order to protect human health or the environment~~ if the permittee has a permit violation in three (3) or more consecutive discharge monitoring periods."

AND

Page 7, delete lines 1 through 14

AND

Page 7, delete line 17, and substitute the following:

~~"works-~~

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

(B)(i) The department shall determine the required initial and annual trust fund contribution fees for each nonmunicipal domestic sewage treatment works based on each nonmunicipal domestic sewage treatment works' actual flow and existing and projected number of residential end users.

(ii) However, the trust fund contribution fee

required by the department shall not exceed two hundred dollars (\$200) per year for no-discharge permits or one thousand dollars (\$1,000) per year for discharge permits.

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

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

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

(iii) Shall be deposited into the Nonmunicipal Domestic Sewage Treatment Works Trust Fund.

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

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

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

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

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

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

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

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

(8) The department shall not directly operate or be responsible for the operation of a nonmunicipal domestic sewage treatment works."

AND

Page 7, line 19, delete "SECTION 2", and substitute "SECTION 3"

AND

Page 7, line 25, delete "and"

AND

Page 7, line 27, delete "~~;~~ ~~and~~", and substitute "; and"

AND

Page 7, delete lines 28 through 32, and substitute the following:

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

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

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

AND

Page 8, delete lines 1 through 18, and substitute the following:

"SECTION 4. Arkansas Code Title 19, Chapter 5, Subchapter 11, is amended to add an additional section to read as follows:

19-5-1142. Nonmunicipal Domestic Sewage Treatment Works Trust Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Nonmunicipal Domestic Sewage Treatment Works Trust Fund".

(b) The fund shall consist of:

(1) Funds appropriated by the General Assembly;

(2) Trust fund contribution fees under § 8-4-203(b);

(3) Grants made by any person, state agency, or federal government agency;

(4) Gifts and donations; and

(5) Interest earned on the moneys deposited into the fund.

(c)(1) The fund shall be used by the Arkansas Department of Environmental Quality to ensure adequate operation, maintenance, and completed closure of a nonmunicipal domestic sewage treatment works if the Director of the Arkansas Department of Environmental Quality determines that an owner or operator has not adequately operated, maintained, or completed closure of the nonmunicipal domestic sewage treatment works.

(2) If the director determines that an owner or operator has not adequately operated, maintained, or completed closure of the nonmunicipal domestic sewage treatment works, the department may use moneys in the fund to hire a third-party contractor to:

(A) Take remedial action, including without limitation corrective action;

(B) Initiate or complete the closure of a nonmunicipal domestic sewage treatment works;

(C) Maintain and operate a nonmunicipal sewage treatment works; or

(D) Take any other action the director determines to be necessary to carry out the purposes of this section and § 8-4-203(b)."

The Amendment was read _____

By: Representative Davis
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Chief Clerk