

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

HOUSE BILL 2166

4
5 By: Representative Cook

For An Act To Be Entitled

9 "AN ACT AUTHORIZING THE DEPARTMENT OF POLLUTION CONTROL &
10 ECOLOGY TO REQUIRE ODOR ABATEMENT AND WETLAND PROTECTION
11 MEASURES IN CONFINED SWINE PERMITS; TO CREATE A PRIVATE
12 RIGHT OF ACT FOR VIOLATIONS OF THE AIR POLLUTION CONTROL
13 ACT AND PROVIDE FOR THE PAYMENT OF ATTORNEYS¹ AND EXPERTS¹
14 FEES; AND FOR OTHER PURPOSES."

Subtitle

17 "AN ACT CONCERNING PRIVATE RIGHTS OF
18 ACTION FOR AIR POLLUTION VIOLATIONS AND
19 THE REGULATION OF CONFINED SWINE
20 OPERATIONS. »

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

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24 SECTION 1. (a) The General Assembly finds that confined swine
25 operations provide economic benefits to the state. The growth of swine
26 operations in recent years have increased the importance of good animal waste
27 management practices to protect citizens from the deterioration of the quality
28 of life, devaluation of property, and adverse health affects to the citizens
29 of the State of Arkansas. It is critical that the state balances the growth
30 of swine operations with effective safeguards for the citizens. It is the
31 intention of the state to promote a cooperative and coordinated approach to
32 animal waste management among the agencies of the state.

33 (b) To the above end, Title 8, Chapter 4 of the Arkansas Code
34 Annotated is hereby amended to add a new Subchapter 4, entitled ¹Confined
35 Swine Operations. » The provisions of Sections 3 through 6 of this Act shall
36 be compiled in this new subchapter.

1 (c) Further, Section 7 of this Act seeks to provide an adequate
 2 right of legal remedy to private citizens adversely affected by air pollution
 3 by amending existing law which forecloses such right.

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 5 SECTION 2. DEFINITIONS. For the purposes of this Act:

6 (1) Department means the Arkansas Department of Pollution Control &
 7 Ecology, its Director, and his or her staff.

8 (2) Commission means the Arkansas Pollution Control & Ecology
 9 Commission, or its successor.

10 (2) Confined Swine Operation means any lot or facility where swine
 11 have been, are, or will be stabled or confined, which is required to receive a
 12 permit from the department for liquid waste management.

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 14 SECTION 3. PERMITS (a) An application for a permit for a confined swine
 15 operation shall include proof of actual notice of the application for a permit
 16 to all adjacent residents and shall also provide proof of reasonable efforts
 17 to provide notice of the application for a permit to adjacent non-residential
 18 landowners.

19 (b) The department shall not grant a permit for a confined swine
 20 operation located within one-quarter (1/4) mile of any occupied residence,
 21 business, or other facility serving the public, unless the permit contains
 22 conditions requiring operational controls approved by the department to abate
 23 odors from extending to places of public or private use. The department shall
 24 extend technical assistance to persons who currently possess permits issued by
 25 the department for confined swine operations concerning demonstrated means of
 26 abating odors from such facilities. Notwithstanding the exceptions of A.C.A.
 27 8-4-305, the department shall have the authority to require such permit
 28 conditions and enforce their terms to the end of abating odors from confined
 29 swine operations which unreasonably interfere with enjoyment of human life or
 30 property.

31 (c) From the effective date of this subchapter, no permit shall be
 32 issued for operations which do not comply with the buffer zone requirements of
 33 Section 4.

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 35 SECTION 4. BUFFER ZONE FROM WETLANDS. (a) No confinement buildings,
 36 settling basins, holding ponds, other liquid waste containment structures or

1 land application of waste shall be located in or within three hundred twenty
 2 (300) feet from wetlands.

3 (b) "Wetlands" means, for purposes of this act, lands that have a
 4 predominance of hydric soil, are inundated or saturated by water or ground
 5 water at a frequency and duration sufficient to support a prevalence of
 6 hydrophytic vegetation typically adapted for life in saturated soil
 7 conditions, and, under normal circumstances, do support a prevalence of
 8 hydrophytic vegetation. For the purposes of this Section, "normal
 9 circumstances" means soil and hydrologic conditions that are normally present
 10 without regard to whether vegetation has been removed.

11 (b) Wetlands must be identified through the confirmation of the three
 12 (3) wetlands criteria: hydric soil, hydrology, and hydrophytic vegetation.
 13 All three criteria must be met for an area to be identified as wetlands.

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 15 SECTION 6. APPEALS FROM PERMITTING AND ENFORCEMENT ACTIONS;
 16 REGULATIONS. (a) The commission shall provide the opportunity for an
 17 adjudicatory hearing to contest any permitting or enforcement action of the
 18 department in its administration of this subchapter. Upon majority vote, the
 19 commission may initiate adjudicatory review of any department decision under
 20 this subchapter.

21 (b) The commission is authorized to promulgate regulations deemed
 22 necessary to clarify or implement the intent of this subchapter.

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 24 SECTION 7. Arkansas Code 8-4-307 is amended to read as follows:

25 "~~8-4-307. Private rights unchanged.~~ Private rights.

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

33 ~~— (b) A determination by the commission that air pollution or air~~
 34 ~~contamination exists or that any standard, rule, or regulation has been~~
 35 ~~violated, whether or not a proceeding or action is brought by the state, shall~~
 36 ~~not create, by reason thereof, any presumption of law or finding of fact which~~

1 ~~shall inure to, or be for the benefit of, any person other than the state.~~
2 Any person adversely affected by the violation of this subchapter or any rule,
3 regulation, or order promulgated by the commission shall have a private right
4 of action, in a court of competent jurisdiction, against the person violating
5 the law or rule, regulation, or order.

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7 SECTION 8. All provisions of this act of a general and permanent nature
8 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
9 Revision Commission shall incorporate the same in the Code.

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11 SECTION 9. If any provision of this act or the application thereof to
12 any person or circumstance is held invalid, such invalidity shall not affect
13 other provisions or applications of the act which can be given effect without
14 the invalid provision or application, and to this end the provisions of this
15 act are declared to be severable.

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17 SECTION 10. All laws and parts of laws in conflict with this act are
18 hereby repealed.

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