

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4
5 By: Senator Bell

A Bill

SENATE BILL 558

For An Act To Be Entitled

"AN ACT TO AMEND ARKANSAS CODE 8-4-103 CONCERNING
ENFORCEMENT ACTIONS UNDER THE ARKANSAS WATER AND AIR
POLLUTION CONTROL ACT; AND FOR OTHER PURPOSES."

Subtitle

"AN ACT CONCERNING ENFORCEMENT ACTIONS
UNDER THE ARKANSAS WATER AND AIR
POLLUTION CONTROL ACT."

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

SECTION 1. Arkansas Code 8-4-103, concerning enforcement actions under the Arkansas Water and Air Pollution Control Act, is amended to add a new subsection to read as follows:

(m)(1) For the purposes of this subsection (m):

(A) Enforcement action means an action to enforce the requirements of any federal program that has been delegated to or otherwise administered by the Department; and

(B) Respondent means a person against whom an enforcement action is directed.

(2) Upon the receipt of a document proposing to initiate, or upon initiation of, or at any time during, an enforcement action the respondent may transfer the enforcement action to Pulaski County Chancery Court, or to the chancery court of the county in which the respondent's facility is located. The enforcement action shall be transferred by filing a Notice of Transfer with the chancery clerk along with a copy of document that proposes or commences the enforcement action, and upon such filing an enforcement action

1 is deemed to have commenced in that court. The Notice of Transfer shall be
2 served upon the department and all parties to the enforcement action.

3 (3) In any action removed to chancery court, the department shall
4 be the petitioner. No rights of the department to obtain relief, no defenses
5 available to the respondent, and no rights of third parties to intervene shall
6 be impaired by removal of the action. Within twenty (20) days after the
7 removal of the action to chancery court, the petitioner shall file with the
8 court and serve upon all parties an initial pleading setting forth the basis
9 for the enforcement action, the status of the enforcement action, and the
10 relief sought in the enforcement action. The respondent has ten (10) days to
11 respond to petitioner's initial pleading unless additional time is allowed by
12 the court. Within thirty (30) days after removal of the action to chancery
13 court, the court shall hold a hearing to determine the status of the
14 enforcement action and the court may enter such orders as may be appropriate
15 to resolve the matter. Should the department fail to proceed in chancery, the
16 respondent may move to have the enforcement action dismissed with prejudice.
17 The court shall retain jurisdiction to enforce the terms of any order entered,
18 whether by adjudication or settlement.

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20 SECTION 2. All provisions of this act of a general and permanent nature
21 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
22 Revision Commission shall incorporate the same in the Code.

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24 SECTION 3. If any provision of this act or the application thereof to
25 any person or circumstance is held invalid, such invalidity shall not affect
26 other provisions or applications of the act which can be given effect without
27 the invalid provision or application, and to this end the provisions of this
28 act are declared to be severable.

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30 SECTION 4. All laws and parts of laws in conflict with this act are
31 hereby repealed.

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33 SECTION 5. EMERGENCY. It is found and determined by the General
34 Assembly that through the adoption of Act 352 of 1993, the legislature
35 expanded the rights of third parties to be notified of and participate in
36 enforcement actions initiated by the department, and to avoid the need to have

1 a duplicative enforcement action in federal court when the department has
2 initiated enforcement action. A federal court has recently held that these
3 procedures are inadequate because they do not require enforcement actions to
4 be instituted in a court. Dual enforcement by the department in one forum,
5 and by third parties in another forum has the potential to undermine effective
6 enforcement of the environmental laws by the state, and to delay compliance
7 with those laws by industries in this state. Through this act an enforcement
8 action may be transferred to court so that third parties whose rights can only
9 be protected by enforcement proceedings that are initiated in a court can have
10 a judicial forum made available to them, and the agency enforcement action can
11 be resolved in the same forum. This act is immediately necessary to protect
12 third parties. Therefore, an emergency is declared to exist and this act
13 being immediately necessary for the preservation of the public peace, health
14 and safety shall become effective on the date of its approval by the Governor.
15 If the bill is neither approved nor vetoed by the Governor, it shall become
16 effective on the expiration of the period of time during which the Governor
17 may veto the bill. If the bill is vetoed by the Governor and the veto is
18 overridden, it shall become effective on the date the last house overrides the
19 veto.

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