

Stricken language would be deleted from present law. Underlined language would be added to present law.

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

A Bill

SENATE BILL 727

4
5 By: Senator Mahony
6 By: Representatives Newman and Sheppard

For An Act To Be Entitled

9 "AN ACT REQUIRING THE DEPARTMENT OF POLLUTION CONTROL AND
10 ECOLOGY TO GIVE PROPER CONSIDERATION TO PUBLIC COMMENTS ON
11 PERMIT ACTIONS; AND FOR OTHER PURPOSES."

Subtitle

13
14 "AN ACT CONCERNING THE RESPONSE TO
15 PUBLIC COMMENTS ON PERMITTING ACTIONS BY
16 THE DEPARTMENT OF POLLUTION CONTROL AND
17 ECOLOGY."

18
19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21
22 SECTION 1. Arkansas Code 8-4-203 is amended to read as follows:

23 "8-4-203. Permits generally.

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

31 (b)(1) When any application for the issuance of a new permit or a major
32 modification of an existing permit is filed with the department, the
33 department shall cause notice of the application to be published in a
34 newspaper of general circulation in the county in which the proposed facility
35 is to be located.

36 (2) The notice required by this subsection shall advise that any

1 interested person may request a public hearing on the permit application by
2 giving the department a written request within ten (10) days of the
3 publication of the notice.

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

8 (4) [Repealed.]

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

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

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

18 (2)(A) The department's final decision shall include a response to
19 each issue raised in any public comments received during the public comment
20 period. Such response shall manifest reasoned consideration of the issues
21 raised by the public comments and shall be supported by appropriate legal,
22 scientific, or practical reasons for accepting or rejecting the substance of
23 the comment in the department's permitting decision. For the purposes of
24 this section, response to comments by the department should serve the roles of
25 both developing the record for possible judicial review of an individual
26 permitting action and a record for the public's review of the department's
27 technical and legal interpretations on long-range regulatory issues. Nothing
28 in this section, however, shall be construed as limiting the department's
29 authority to raise all relevant issues of regulatory concern upon adjudicatory
30 review of the Commission of a particular permitting action.

31 (B) In the case of any discharge limit, emission limit, environmental
32 standard, analytical method, or monitoring requirements the record of the
33 proposed action and the response shall include a written explanation of the
34 rationale for the proposal, demonstrating that any technical requirements or
35 standards are based upon generally accepted scientific knowledge and
36 engineering practices. For any standard or requirement that is identical to a

1 duly promulgated and applicable regulation, this demonstration may be
2 satisfied by reference to the regulation. In all other cases, the department
3 must provide its own justification with appropriate reference to the
4 scientific and engineering literature or written studies conducted by the
5 department.

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

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

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

14 (f)(1) Permits for the discharge of pollutants to the waters of the
15 state or for prevention of pollution of the waters of the state shall remain
16 freely transferable, provided the applicant for the transfer notifies the
17 director at least thirty (30) days in advance of the proposed transfer date
18 and submits a disclosure statement as required by § 8-1-106.

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

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

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

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

30

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

34

35 SECTION 3. If any provision of this act or the application thereof to
36 any person or circumstance is held invalid, such invalidity shall not affect

1 other provisions or applications of the act which can be given effect without
2 the invalid provision or application, and to this end the provisions of this
3 act are declared to be severable.

4

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

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35