

State of Arkansas

82nd General Assembly

Regular Session, 1999

A Bill

SENATE BILL 135

By: Senator Scott

For An Act To Be Entitled

"AN ACT TO AMEND ARKANSAS CODE 8-4-203 TO MAKE
APPLICANTS FOR PERMITS ISSUED BY THE DEPT OF
ENVIRONMENTAL QUALITY RESPONSIBLE FOR THE COST OF
PUBLICATION OF APPLICATION NOTICES AND NOTICES OF
PROPOSALS TO GRANT PERMITS; AND FOR OTHER PURPOSES."

Subtitle

"TO MAKE PERMIT APPLICANTS RESPONSIBLE
FOR THE COST OF PUBLICATION OF
APPLICATION NOTICES AND NOTICES OF
PROPOSALS TO GRANT PERMITS."

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

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

"8-4-203. Permits generally.

(a) The Arkansas Department of ~~Pollution Control and Ecology~~
Environmental Quality, 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;

(1) ~~to~~ To prevent, control, or abate pollution;

(2) ~~for~~ For the discharge of sewage, industrial waste, or other
wastes into the waters of the state, including the disposal of pollutants into
wells; and

(3) ~~for~~ 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

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

5 (2) The notice required by ~~this subsection~~ subdivision (b)(1) of
 6 this section shall advise that any interested person may request a public
 7 hearing on the permit application by giving the department a written request
 8 within ten (10) days of the publication of the notice.

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

14 ~~(4) [Repealed].~~

15 (c)(1)(A) Whenever the department proposes to grant or deny any permit
 16 application, it shall cause notice of its proposed action to be published in
 17 either:

18 (i) ~~a~~ A newspaper of general circulation in the county
 19 in which the facility that is the subject of the application is located, ~~or~~

20 (ii) ~~in~~ In the case of a statewide permit in a
 21 newspaper of general circulation in the state.

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

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

27 (2)(A) The department's final decision shall include a response
 28 to each issue raised in any public comments received during the public comment
 29 period. Such response shall manifest reasoned consideration of the issues
 30 raised by the public comments and shall be supported by appropriate legal,
 31 scientific, or practical reasons for accepting or rejecting the substance of
 32 the comment in the department's permitting decision. For the purposes of this
 33 section, response to comments by the department should serve the roles of both
 34 developing the record for possible judicial review of an individual permitting
 35 action and a record for the public's review of the department's technical and
 36 legal interpretations on long-range regulatory issues. Nothing in this

1 section, however, shall be construed as limiting the department's authority to
 2 raise all relevant issues of regulatory concern upon adjudicatory review of
 3 the commission of a particular permitting action.

4 (B) The case of any discharge limit, emission limit,
 5 environmental standard, analytical method, or monitoring requirements, the
 6 record of the proposed action, and the response shall include a written
 7 explanation of the rationale for the proposal, demonstrating that any
 8 technical requirements or standards are based upon generally accepted
 9 scientific knowledge and engineering practices. For any standard or
 10 requirement that is identical to a duly promulgated and applicable regulation,
 11 this demonstration may be satisfied by reference to the regulation. In all
 12 other cases, the department must provide its own justification with
 13 appropriate reference to the scientific and engineering literature or written
 14 studies conducted by the department.

15 (d)(1) All costs of publication of ~~notice~~ notices of applications and
 16 notices of proposals to grant permits under this section shall be ~~paid by the~~
 17 ~~department with reimbursement by the applicant to be made to the department~~
 18 ~~prior to the issuance of the final permit~~ the responsibility of the applicant.

19 (2) All ~~moneys received pursuant to this subsection shall be~~
 20 ~~classified as refunds to expenditures~~ costs of publication of notices of
 21 proposals to deny a permit under this section shall be the responsibility of
 22 the department.

23 (3) Any moneys received pursuant to subsection (d) of this
 24 section shall be classified as refunds to expenditures.

25 (e) Only those persons who submit comments on the record during the
 26 public comment period and the applicant shall have standing to appeal the
 27 decision of the department to the ~~commission~~ Arkansas Pollution Control and
 28 Ecology Commission.

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

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

36 (3) The permit is automatically transferred to the new permittee

1 unless the director denies the request within thirty (30) days of the receipt
2 of the disclosure statement.

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

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

9
10 SECTION 2. All provisions of this act of a general and permanent nature
11 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
12 Revision Commission shall incorporate the same in the Code.

13
14 SECTION 3. If any provision of this act or the application thereof to
15 any person or circumstance is held invalid, such invalidity shall not affect
16 other provisions or applications of the act which can be given effect without
17 the invalid provision or application, and to this end the provisions of this
18 act are declared severable

19
20 SECTION 4. All laws or parts of laws in conflict with this act are
21 repealed.