

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005  
4

# A Bill

HOUSE BILL 2085

5 By: Representative Ledbetter  
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7

## For An Act To Be Entitled

9 AN ACT TO REQUIRE THE ARKANSAS POLLUTION CONTROL  
10 AND ECOLOGY COMMISSION TO ADOPT GROUNDWATER  
11 STANDARDS AND GROUNDWATER CLASSIFICATIONS; AND  
12 FOR OTHER PURPOSES.  
13

## Subtitle

14 AN ACT TO ADOPT GROUNDWATER STANDARDS  
15 AND GROUNDWATER CLASSIFICATIONS.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code § 8-4-202 is amended to read as follows:

22 8-4-202. Rules and regulations.

23 (a) The Arkansas Pollution Control and Ecology Commission is given and  
24 charged with the power and duty to adopt, modify, or repeal, after notice and  
25 public hearings, rules and regulations implementing or effectuating the  
26 powers and duties of the Arkansas Department of Environmental Quality and the  
27 commission under this chapter.

28 (b) Without limiting the generality of this authority, these rules and  
29 regulations may, among other things, prescribe:

30 (1) Effluent standards specifying the maximum amounts or  
31 concentrations and the physical, thermal, chemical, biological, and  
32 radioactive nature of the contaminants that may be discharged into the waters  
33 of this state or into publicly owned treatment facilities;

34 (2) Requirements and standards for equipment and procedures for  
35 monitoring contaminant discharges at their sources, including publicly owned  
36 treatment facilities and industrial discharges into such facilities, the



1 collection of samples, and the collection, reporting, and retention of data  
2 resulting from such monitoring; and

3 (3) Water quality standards, performance standards, and  
4 pretreatment standards.

5 (c)(1) By September 30, 2006, the commission shall adopt groundwater  
6 standards and groundwater classifications for purposes of allowing the  
7 department to establish permit limitations and cleanup standards that are  
8 protective of the waters of the State of Arkansas.

9 (2) The groundwater standards and groundwater classifications  
10 shall not be inconsistent with the groundwater protection program developed  
11 by the Arkansas Soil and Water Conservation Commission under the Arkansas  
12 Groundwater Protection and Management Act, § 15-22-901 et seq.

13 ~~(e)(1)(d)(1)(A)~~ Any person shall have the right to petition the  
14 commission for the issuance, amendment, or repeal of any rule or regulation.

15 (B) Within sixty (60) days from the date of the submission  
16 of a petition, the commission shall either institute rulemaking proceedings  
17 or give the petitioner written notice denying the petition, together with a  
18 written statement setting out the reasons for denial.

19 (2) In the event the petition is denied, the decision of the  
20 commission will be deemed a final order subject to appeal as provided in  
21 subdivision ~~(d)(5)~~(e)(5) of this section.

22 (3) The record for appeal in a petition denial shall consist of  
23 the petition for rulemaking filed with the commission, the commission's  
24 written statement setting out the reasons for denial, and any document  
25 referenced therein.

26 ~~(d)(1)(A)~~(e)(1)(A) ~~Prior to~~ Before the adoption, amendment, or repeal  
27 of any rule or regulation or prior to suspending the processing of a type or  
28 category of permits or the declaration of a moratorium on a type or category  
29 of permits, the commission shall give at least thirty (30) days' notice of  
30 its intended action.

31 (B) The notice shall include:

32 (i) A statement of the substance of the intended  
33 action;

34 (ii) A description of the subjects and issues  
35 involved; and

36 (iii) The time, place, and manner in which

1 interested persons may make comments.

2 (C) The notice shall be mailed to all persons who have  
3 requested advance notice of rulemaking proceedings.

4 (D) The notice shall also be published at least twice in  
5 newspapers having a general statewide circulation and in the appropriate  
6 industry, trade, or professional publications the commission may select.

7 (2)(A) All interested parties shall be afforded a reasonable  
8 opportunity to:

9 (i) Submit written data, information, views,  
10 opinions, and arguments; and

11 (ii) Make oral statements concerning the proposed  
12 rule, regulation, suspension, or moratorium prior to a decision being  
13 rendered by the commission.

14 (B) All written material, photographs, published material,  
15 and electronic media received by the commission shall be preserved and, along  
16 with a record of all oral comments made at any public hearing, shall become  
17 an element of the record of rulemaking.

18 (C) Any person who considers himself injured in his  
19 person, business, or property by final agency action under this section shall  
20 be entitled to judicial review of the action under this section.

21 (3)(A) If, in response to comments, the commission amends a  
22 proposed regulation to the extent that the rule would have an effect not  
23 previously expressed in the notice required by subdivision ~~(d)(1)~~(e)(1) of  
24 this section, the commission shall provide another adequate public notice.

25 (B) Subdivision ~~(d)(3)(A)~~(e)(3)(A) of this section shall  
26 not, however, require a second public notice if the final regulation is a  
27 logical outgrowth of the regulation proposed in the prior notice.

28 (4) The commission shall compile and maintain a record of rule-  
29 making that shall contain:

30 (A)(i) A copy of all notices described in this subsection  
31 ~~(d)(e) of this section~~ and a concise general statement of the basis and  
32 purpose of the proposed rule, which shall include a written explanation of  
33 the necessity of the regulation and a demonstration that any technical  
34 regulation or technical standard is based on generally accepted scientific  
35 knowledge and engineering practices.

36 (ii) For any standard or regulation that is

1 identical to a regulation promulgated by the Environmental Protection Agency,  
 2 this portion of the record may be satisfied by reference to the Code of  
 3 Federal Regulations.

4 (iii) In all other cases, the Arkansas Department of  
 5 Environmental Quality must provide its own justification with appropriate  
 6 references to the scientific and engineering literature or written studies  
 7 conducted by the department;

8 (B) Copies of all written material, photographs, published  
 9 materials, electronic media, and the record of all oral comments received by  
 10 the commission during the public comment period and hearings; and

11 (C) A responsive summary which groups public comments into  
 12 similar categories and explains why the commission accepted or rejected the  
 13 rationale of each category.

14 (5)(A) The decisions of the commission with regard to this  
 15 section are final and may be judicially appealed to the appropriate circuit  
 16 court as provided in § 8-4-222 within thirty (30) days after filing with the  
 17 office of the Secretary of State by persons who have standing as set out in  
 18 subdivision ~~(d)(2)~~(e)(2) of this section.

19 (B) The record for review shall consist of a copy of the  
 20 regulation and the record of rulemaking described in subdivision ~~(d)(4)~~(e)(4)  
 21 of this section.

22 (C) Rule changes, suspensions, or moratoria on types of  
 23 categories of permits adopted by the commission shall be stayed and not take  
 24 effect during the pendency of the appeal, except as specified in subsection  
 25 ~~(e)(f)~~ of this section.

26 ~~(e)(1)~~(f)(1) If the commission determines that imminent peril to the  
 27 public health, safety, or welfare requires immediate change in the rules or  
 28 immediate suspension or moratorium on categories or types of permits, it may,  
 29 after documenting the facts and reasons, declare an emergency and implement  
 30 emergency rules, regulations, suspensions, or moratoria.

31 (2) No rule, regulation, suspension, or moratorium adopted under  
 32 an emergency declaration shall be effective for longer than one hundred  
 33 eighty (180) days.

34 (3) The imminent loss of federal funding, certification, or  
 35 authorization for any program administered by the department shall establish  
 36 a prima facie case of imminent peril to the public health, safety, or

1 welfare.  
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