

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

As Engrossed: H3/30/05

A Bill

HOUSE BILL 2085

5 By: Representatives Ledbetter, *Mahony*
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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 for purposes of allowing the department to establish permit
7 limitations and cleanup standards that are protective of the waters of the
8 State of Arkansas.

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

13 (3) Before the adoption of the groundwater standards, the
14 commission shall provide a copy of the proposed standards to the Executive
15 Director of the Arkansas Soil and Water Conservation Commission by certified
16 mail, return receipt requested and the directors of any other interested
17 state boards and commissions.

18 (4) Within sixty (60) days of receipt of notice, the Arkansas
19 Soil and Water Conservation Commission shall file written comments with the
20 commission including a finding of whether the proposed standards are
21 consistent with the groundwater program established by the Arkansas Soil and
22 Water Conservation Commission and any changes that must be made to establish
23 the consistency.

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

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

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

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

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

6 (B) The notice shall include:

7 (i) A statement of the substance of the intended
8 action;

9 (ii) A description of the subjects and issues
10 involved; and

11 (iii) The time, place, and manner in which
12 interested persons may make comments.

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

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

18 (2)(A) All interested parties shall be afforded a reasonable
19 opportunity to:

20 (i) Submit written data, information, views,
21 opinions, and arguments; and

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

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

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

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

36 (B) Subdivision ~~(d)(3)(A)~~(e)(3)(A) of this section shall

1 not, however, require a second public notice if the final regulation is a
2 logical outgrowth of the regulation proposed in the prior notice.

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

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

11 (ii) For any standard or regulation that is
12 identical to a regulation promulgated by the Environmental Protection Agency,
13 this portion of the record may be satisfied by reference to the Code of
14 Federal Regulations.

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

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

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

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

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

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

