

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: H3/28/05

A Bill

HOUSE BILL 2447

5 By: Representative Pace
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For An Act To Be Entitled

9 AN ACT TO REQUIRE WRITTEN AND VERIFIED COMPLAINTS
10 BEFORE A WARRANT MAY BE ISSUED TO AN EMPLOYEE OF
11 THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY;
12 AND FOR OTHER PURPOSES.
13

Subtitle

14 AN ACT TO REQUIRE WRITTEN AND VERIFIED
15 COMPLAINTS BEFORE A WARRANT MAY BE
16 ISSUED TO AN EMPLOYEE OF THE ARKANSAS
17 DEPARTMENT OF ENVIRONMENTAL QUALITY.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code § 8-1-107(b), concerning definitions for
24 Arkansas Department of Environmental Quality investigations, is amended to
25 read as follows:

26 (b) Definitions. As used in this section, the following terms shall
27 have these ascribed meanings:

28 (1) "Administrative inspections" means investigation by
29 department personnel at facilities operating within the department's apparent
30 regulatory jurisdiction;

31 (2) "Facility" means the public or private area, premises,
32 cartilage, building, or conveyance described as the subject of administrative
33 inspection;

34 (3) "Pervasively regulated facility or activity" means the
35 activity or facility which is the location of activity authorized by the
36 department through a permit, license, certification, or operational status



1 approval; and

2 (4)(A) "Probable cause" means showing through a written
3 complaint as described in subsection (g) of this section that an
4 administrative search limited in scope is necessary to ensure compliance with
5 or enforcement of laws, regulations, or orders charged to the department for
6 implementation.

7 (B) For the purpose of conducting administrative
8 inspections or applying for administrative warrants, probable cause may be
9 provided to the department through complaints or other means which reasonably
10 justify a limited and controlled administrative inspection.

11

12 SECTION 2. Arkansas Code § 8-1-107(c)(1)(A), concerning administrative
13 investigations by the Arkansas Department of Environmental Quality, is
14 amended to read as follows:

15 (1)(A)(i) Whenever the department ~~obtains information~~ receives a
16 written complaint as described in subsection (g) of this section which
17 supports reasonable cause to believe that a violation of any law within its
18 regulatory authority is being or has been violated, or that unauthorized
19 regulated conduct is occurring or has occurred, department personnel or its
20 agents may demand entry onto any property, public or private, to inspect any
21 facility.

22 (ii) A representative of the permit holder shall be
23 present during any inspection under this section.

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25 SECTION 3. Arkansas Code § 8-1-107(c)(2), concerning administrative
26 warrants for the Arkansas Department of Environmental Quality, is amended to
27 read as follows:

28 (2)(A) A warrant shall issue only upon ~~an affidavit of a~~
29 ~~department official, employee, or agent having knowledge of the facts~~
30 alleged, a written complaint as described in subsection (g) of this section
31 sworn to before the judge or magistrate and establishing the grounds for
32 issuing the warrant.

33 (B) If the judge or magistrate is satisfied that grounds
34 for the application exist or that there is probable cause to believe they
35 exist, he shall issue a warrant identifying the facility to be inspected, and
36 the purpose of the inspection.

- 1 (C) The warrant shall:
- 2 ~~(A)(i)~~ State the grounds for its issuance and the
- 3 name of each person whose affidavit has been taken in support thereof;
- 4 ~~(B)(ii)~~ Be directed to a department officer or
- 5 employee;
- 6 ~~(C)(iii)~~ Command the person to whom it is directed
- 7 to inspect the area, premises, building, or conveyance identified for the
- 8 purpose specified;
- 9 ~~(D)(iv)~~ Specifically identify any documents or
- 10 samples to be gathered during the inspection;
- 11 ~~(E)(v)~~ Direct that it be served during normal
- 12 business hours unless emergency or extraordinary circumstances compel
- 13 otherwise; and
- 14 ~~(F)(vi)~~ Designate the judge or magistrate to whom it
- 15 shall be returned;

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17 SECTION 4. Arkansas Code § 8-1-107, concerning warrants for

18 investigations by the Arkansas Department of Environmental Quality, and

19 warrants, is amended to read as follows:

20 (g)(1) A person who provides information to the Arkansas Department of

21 Environmental Quality concerning any law charged to the authority of the

22 department shall provide:

23 (A) A written complaint to the commission or department;

24 and

25 (B) His or her:

26 (i) Legal name; and

27 (ii) Current mailing address at which the

28 complainant may be contacted.

29 (2) All complaints provided under this section shall be open to

30 public inspection under the Freedom of Information Act of 1967, § 25-19-101

31 et seq.

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/s/ Pace