

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 86th General Assembly  
3 Regular Session, 2007  
4

# A Bill

HOUSE BILL 2653

5 By: Representative Pace  
6  
7

## 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.  
18  
19  
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

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 inspections by the Arkansas Department of Environmental Quality, is amended  
14 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.

24  
25 SECTION 3. Arkansas Code § 8-1-107(d)(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 or she shall issue a warrant identifying the facility to be  
36 inspected, and 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, is  
19 amended to add an additional subsection 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 Arkansas Pollution Control  
24 and Ecology Commission or the department; and

25                   (B) The complainant's:

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.