

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 87th General Assembly
3 Regular Session, 2009
4

A Bill

HOUSE BILL 1424

5 By: Representatives Webb, Reynolds
6 By: Senator Glover
7

For An Act To Be Entitled

10 AN ACT TO AMEND ARKANSAS CODE § 8-4-203 TO
11 REQUIRE FINANCIAL ASSURANCE FOR THE CLOSURE OR
12 RESTORATION OF PERMITTED SITES IN THE STATE OF
13 ARKANSAS THAT LAND APPLY OR STORE FLUIDS
14 GENERATED OR UTILIZED DURING EXPLORATION OR
15 PRODUCTION PHASES OF OIL OR GAS OPERATIONS; AND
16 FOR OTHER PURPOSES.

Subtitle

18 AN ACT TO REQUIRE FINANCIAL ASSURANCE
19 FOR LANDFARMS.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 8-4-203(c) – (k), concerning permits
26 generally, is amended to read as follows:

27 (c)(1)(A)(i) All facilities that engage in land application or storage
28 of fluids generated or utilized during exploration or production phases of
29 oil or gas operations shall be closed in a manner that ensures protection of
30 human health and the environment.

31 (ii) As used in this subsection “land application or
32 storage of fluids generated or utilized during exploration or production
33 phases of oil or gas operations” means land-farming through the controlled
34 and repeated application of drilling fluids to a soil surface or the practice
35 of receiving and storing said fluids from offsite for waste management.
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1 (iii) Surface facilities associated with Class II
2 injection wells are specifically excluded from the requirements of this
3 subsection (c).

4 (iv) Land applications at the drilling or
5 exploration site that are authorized under any general permit issued by the
6 department are excluded from the requirements of this subsection (c).

7 (B) By October 1, 2009, each existing permitted facility
8 regulated under this subsection (c) shall submit to the department the
9 following:

10 (i) A plan to close the permitted facility and make
11 any site restoration deemed necessary by the department;

12 (ii) A detailed cost estimate to close and
13 restore the permitted facility that meets the requirements of this subsection
14 (c) and is approved by the department; and

15 (iii) A financial mechanism that demonstrates to the
16 department's satisfaction the permittee's financial ability to ensure
17 adequate closure and any necessary restoration of the permitted facility in
18 accordance with the requirements of this subsection (c).

19 (C) The department shall not issue, modify, or renew a
20 permit for facilities regulated under this subsection (c) without the permit
21 applicant first demonstrating to the department's satisfaction the
22 applicant's financial ability to ensure adequate closure and any necessary
23 restoration of the permitted facility in accordance with the requirements of
24 this subsection (c).

25 (D)(i) The amount of any financial assurance
26 required under this subsection (c) shall be equal to or greater than the
27 detailed cost estimate for a third party to close the permitted facility in
28 accordance with closure plans approved by the department.

29 (ii) The detailed cost estimate shall be prepared by
30 an independent professional consultant.

31 (iii) On or before August 15 of each year, a
32 permittee shall submit to the department for approval a detailed cost
33 estimate to close and restore the permitted facility in accordance with
34 closure plans that have been approved by the department.

35 (E)(i) For new permits, the applicant shall submit to the
36 department for approval a detailed cost estimate to close and restore the

1 facility based on the proposed operation and capacity of the facility from
2 the date the permit is issued through the following October 1.

3 (ii) For renewal or modification applications, the
4 permittee shall submit to the department for approval a detailed cost
5 estimate to close and restore the permitted facility based on closure plans
6 that have been approved by the department.

7 (F)(i) For each permit, the financial assurance mechanism
8 shall be renewed on October 1 of each year.

9 (ii) For each permit, documentation that the
10 required financial assurance mechanism has been renewed beginning October 1
11 of that year shall be received by the department by September 15 of each year
12 or the department shall initiate procedures to:

13 (a) Take possession of the funds guaranteed by the financial assurance
14 mechanism; and

15 (b)(1) Suspend or revoke the permit under which the facility is
16 operated.

17 (2) A permit shall remain suspended until a financial assurance
18 mechanism is provided to the department in accordance with this subsection.

19 (iii) The permittee is responsible for ensuring that
20 documentation of annual renewal is received by the department by its due
21 date.

22 (2) The permittee or applicant shall demonstrate financial
23 ability to adequately close or restore the land application or storage
24 facility by:

25 (A) Obtaining insurance that specifically covers closure
26 and restoration costs;

27 (B) Obtaining a letter of credit;

28 (C) Obtaining a bond or other surety instrument;

29 (D) Creating a trust fund or an escrow account;

30 (E) Combining any of the instruments in (c)(2)(A) – (D);

31 or

32 (F) Any other financial instrument approved by the
33 director.

34 (3) A financial instrument required by this subsection shall:

35 (A) Be posted to the benefit of the department;

36 (B) Provide that the financial instrument cannot be

1 cancelled without sixty (60) days prior written notice addressed to the
2 department's legal division chief as evidenced by a signed, certified mail
3 with a return receipt request; and

4 (C) Be reviewed by the department upon receipt of the
5 cancellation notice to determine whether to initiate procedures to revoke or
6 suspend the facility's permit and whether to initiate procedures to take
7 possession of the funds guaranteed by the financial assurance mechanism.

8 (4) Before the department may release a financial assurance
9 mechanism, the department shall receive a certification by a professional
10 engineer that the permitted facility has been closed and restored in
11 accordance with closure plans that have been approved by the department.

12 (5) The department is not responsible for the operation,
13 closure, or restoration of a facility regulated under this subsection.

14 (d)(1) When ~~any~~ an application for the issuance of a new permit or a
15 major modification of an existing permit is filed with the department, the
16 department shall cause notice of the application to be published in a
17 newspaper of general circulation in the county in which the proposed facility
18 is to be located.

19 (2) The notice required by subdivision ~~(e)(1)~~ (d)(1) of this
20 section shall advise that any interested person may request a public hearing
21 on the permit application by giving the department a written request within
22 ten (10) days of the publication of the notice.

23 ~~(3) Should a hearing be deemed necessary by the department or in~~
24 ~~the event the department~~ If the department determines that a hearing is
25 necessary or desires such a hearing, the department shall schedule a public
26 hearing and shall notify by first class mail the applicant and all persons
27 that have submitted comments of the date, time, and place of the public
28 hearing.

29 ~~(d)(e)~~(1)(A) Whenever the department proposes to grant or deny any
30 permit application, it shall cause notice of its proposed action to be
31 published in either:

- 32 (i) A newspaper of general circulation in the county
33 in which the facility that is the subject of the application is located; or
- 34 (ii) In the case of a statewide permit, in a
35 newspaper of general circulation in the state.

36 (B) The notice shall afford any interested party thirty

1 (30) calendar days in which to submit comments on the proposed permit action.

2 (C) At the conclusion of the public comment period, the
 3 department shall announce in writing its final decision regarding the permit
 4 application.

5 (2)(A)(i) The department's final decision shall include a
 6 response to each issue raised in any public comments received during the
 7 public comment period. ~~Such~~The response shall manifest reasoned
 8 consideration of the issues raised by the public comments and shall be
 9 supported by appropriate legal, scientific, or practical reasons for
 10 accepting or rejecting the substance of the comment in the department's
 11 permitting decision.

12 (ii) For the purposes of this section, response to
 13 comments by the department should serve the roles of both developing the
 14 record for possible judicial review of an individual permitting action and as
 15 a record for the public's review of the department's technical and legal
 16 interpretations on long-range regulatory issues.

17 (iii) Nothing in this section, however, shall be
 18 construed as limiting the department's authority to raise all relevant issues
 19 of regulatory concern upon adjudicatory review of the commission of a
 20 particular permitting action.

21 (B)(i) In the case of any discharge limit, emission limit,
 22 environmental standard, analytical method, or monitoring requirements, the
 23 record of the proposed action and the response shall include a written
 24 explanation of the rationale for the proposal, demonstrating that any
 25 technical requirements or standards are based upon generally accepted
 26 scientific knowledge and engineering practices.

27 (ii) For any standard or requirement that is
 28 identical to a ~~duly promulgated~~ and an applicable regulation, this
 29 demonstration may be satisfied by reference to the regulation. In all other
 30 cases, the department must provide its own justification with appropriate
 31 reference to the scientific and engineering literature or written studies
 32 conducted by the department.

33 ~~(e)~~(f)(1) All costs of publication of notices of applications and
 34 notices of proposals to grant permits under this section shall be the
 35 responsibility of the applicant.

36 (2) All costs of publication of notices of proposals to deny a

1 permit under this section shall be the responsibility of the department.

2 (3) Any moneys received ~~pursuant to~~ under subsection ~~(e)(f)~~ of
 3 this section shall be classified as refunds to expenditures.

4 ~~(f)(g)~~ Only those persons that submit comments on the record during
 5 the public comment period and the applicant shall have standing to appeal the
 6 decision of the department to the Arkansas Pollution Control and Ecology
 7 Commission.

8 ~~(g)(h)~~(1) Permits for the discharge of pollutants into the waters of
 9 the state or for the prevention of pollution of the waters of the state shall
 10 remain freely transferable, provided the applicant for the transfer notifies
 11 the Director of the Arkansas Department of Environmental Quality at least
 12 thirty (30) days in advance of the proposed transfer date and submits a
 13 disclosure statement as required by § 8-1-106.

14 (2) Only those reasons set out in §§ 8-1-106(b)(1) and ~~8-1-~~
 15 ~~106(c) shall~~ constitute grounds for denial of a transfer.

16 (3) The permit is automatically transferred to the new permittee
 17 unless the director denies the request within thirty (30) days of the receipt
 18 of the disclosure statement.

19 ~~(h)(i)~~ In the event of voluminous comments, ~~including, but not limited~~
 20 ~~to~~ including without limitation a petition, the department may require the
 21 designation of a representative to accept any notices required by this
 22 section.

23 ~~(i)(j)~~ The notice provisions of subsections ~~(e)(d)~~ and ~~(d)(e)~~ of this
 24 section ~~shall~~ do not apply to permit transfers or minor modifications of
 25 existing permits.

26 ~~(j)(k)~~ This section in no way restricts local and county government
 27 entities from enacting more stringent ordinances regulating nonmunicipal
 28 domestic treatment sewage systems in Arkansas.

29 ~~(k)(l)~~ The commission may promulgate rules to establish a permit-by-
 30 rule. A permit-by-rule is subject to the public notice requirements and
 31 procedural provisions under § 8-4-202 et seq., but is not subject to the
 32 public notice requirements and procedural provisions under §§ 8-4-203 – 8-4-
 33 205.

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 35 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
 36 General Assembly of the State of Arkansas that establishing financial

1 assurance requirements for the closure of commercial facilities that engage
2 in land application or storage of fluids generated or utilized during
3 exploration or production phases of oil or gas operations is necessary to
4 protect human health and the environment and that a delay in the effective
5 date of this Act may result in harm to human health or the environment.
6 Therefore, an emergency is declared to exist and this Act being necessary for
7 the immediate preservation of the public peace, health, and safety shall be
8 in full force and effect from and after the date of its passage or approval.
9 If the bill is neither approved nor vetoed by the Governor, it shall become
10 effective on the expiration of the period of time during which the Governor
11 may veto the bill. If the bill is vetoed by the Governor and the veto is
12 overridden, it shall become effective on the date the last house overrides
13 the veto.

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