

1 State of Arkansas
2 91st General Assembly
3 Second Extraordinary Session, 2018
4

A Bill

DRAFT MGF/MGF
HOUSE BILL

5 By: Representative Vaught
6

For An Act To Be Entitled

8 AN ACT TO CLARIFY PROCEDURES FOR TRANSFERRING A
9 GENERAL PERMIT TO AN INDIVIDUAL PERMIT BY THE
10 ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY; TO
11 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.
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Subtitle

15 TO CLARIFY PROCEDURES FOR TRANSFERRING A
16 GENERAL PERMIT TO AN INDIVIDUAL PERMIT BY
17 THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL
18 QUALITY; AND TO DECLARE AN EMERGENCY.
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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 § 8-4-203, concerning permits generally of
24 the Arkansas Pollution Control and Ecology Commission concerning water
25 pollution, is amended to add additional subsections to read as follows:

26 (o)(1) This subsection is intended to clarify consistent with federal
27 law procedures for transferring from a general permit to an individual
28 permit.

29 (2)(A) The Director of the Arkansas Department of Environmental
30 Quality may require the owner or operator of a facility authorized by a
31 general permit to apply for and obtain an individual permit.

32 (B) Cases in which an individual permit may be required
33 include the following:

34 (i) The owner or operator is not in compliance with
35 the conditions of the general permit;

36 (ii) A change has occurred in the availability of

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1 demonstrated technology or practices for the control or abatement of
2 pollutants applicable to the point source;

3 (iii) Effluent limitation guidelines are promulgated
4 for point sources covered by the general permit;

5 (iv) A water quality management plan containing
6 requirements applicable to the point source is approved;

7 (v) Circumstances have changed since the time of the
8 request to be covered so that the owner or operator is no longer
9 appropriately controlled under the general permit, or either a temporary or
10 permanent reduction or elimination of the authorized discharge is necessary;

11 (vi) Standards for sewage sludge use or disposal
12 have been promulgated for the sludge use and disposal practice covered by the
13 general permit;

14 (vii)(a) A discharge is a significant contributor of
15 pollutants.

16 (b) In making a determination under
17 subdivision (o)(2)(B)(vii)(a) of this section, the director may consider:

18 (1) The location of the discharge with
19 respect to waters of the United States;

20 (2) The size of the discharge;

21 (3) The quantity and nature of the
22 pollutants discharged to waters of the United States; and

23 (4) Other relevant factors; or

24 (viii) The director has decided not to renew the
25 general permit.

26 (3)(A) The director may require an owner or operator authorized
27 by a general permit to apply for an individual permit under subdivision
28 (o)(2) of this section only if the owner or operator has been notified in
29 writing that a permit application is required.

30 (B) Notice under subdivision (o)(3)(A) of this section
31 shall include:

32 (i) A brief statement of the reasons for the
33 director's decision to require the owner or operator to apply for an
34 individual permit;

35 (ii) An application form;

36 (iii) A statement setting a time for the owner or

1 operator to file the application; and

2 (iv) A statement that on the effective date of the
3 individual permit the general permit as it applies to the individual
4 permittee shall automatically terminate.

5 (C) The director may grant additional time to make
6 application under this subdivision (o)(3) upon request of the applicant.

7 (4)(A) An owner or operator authorized by a general permit may
8 request to be excluded from the coverage of the general permit by applying
9 for an individual permit.

10 (B) The owner or operator shall submit an application to
11 the director no later than ninety (90) days after the publication of the
12 general permit by the department in accordance with applicable procedures.

13 (C) The request shall be processed under the applicable
14 procedures.

15 (D) The request shall be granted by the issuing of an
16 individual permit if the reasons cited by the owner or operator are adequate
17 to support the request.

18 (5)(A) When an individual permit is issued to an owner or
19 operator otherwise subject to a general permit, the applicability of the
20 general permit to the individual permittee is automatically terminated on the
21 effective date of the individual permit.

22 (B)(i) An action taken by the director shall not be
23 construed or interpreted as having the effect of terminating the authority of
24 a permittee to operate under a general permit before an individual permit is
25 issued to that permittee.

26 (ii) An action taken by the director that has the
27 effect of terminating a permittee's authority to operate under a general
28 permit before an individual permit is issued to that permittee is void.

29 (p)(1) This subsection is intended to:

30 (A) Clarify the limitation period as to issues of siting a
31 facility; and

32 (B) Establish a limitation period for other proceedings.

33 (2) When the owner or operator of a facility has obtained
34 authorization to operate at a particular location under a general permit or
35 has received an individual permit that is no longer subject to appeal, all
36 issues relating to the siting of that facility or the suitability of the

1 permitted location are final and not subject to review in subsequent
2 administrative or judicial actions.

3 (3) In addition to the limitations under subdivision (p)(2) of
4 this section, an action against the department or a permittee shall not be
5 commenced unless the act complained of occurred within five (5) years of the
6 date of commencement of the action.

7 (4) This subsection does not restrict the authority of the
8 department to modify the terms of a permit relating to the manner in which
9 operations are conducted at the permitted location, or to pursue revocation
10 of a permit in an enforcement proceeding, if the applicable substantive,
11 procedural, and limitations requirements are followed.

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13 SECTION 2. DO NOT CODIFY. This act shall apply to all facilities that
14 have received authority to operate under the authority of a general permit
15 and to all facilities that have received and individual permit.

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17 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
18 General Assembly of the State of Arkansas that facilities permitted by the
19 Arkansas Department of Environmental Quality are having their authority to
20 continue operations jeopardized by confusion over the requirements for
21 transferring authority to operate from a general permit to an individual
22 permit, and the finality of issues relating to the siting of a facility; and
23 that this act is immediately necessary because the facilities may suffer
24 irreparable harm through a delay in the ability to transfer permits under
25 this act. Therefore, an emergency is declared to exist, and this act being
26 immediately necessary for the preservation of the public peace, health, and
27 safety shall become effective on:

28 (1) The date of its approval by the Governor;

29 (2) If the bill is neither approved nor vetoed by the Governor,
30 the expiration of the period of time during which the Governor may veto the
31 bill; or

32 (3) If the bill is vetoed by the Governor and the veto is
33 overridden, the date the last house overrides the veto.

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