

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: H3/29/21
A Bill

HOUSE BILL 1664

By: Representative Vaught

By: Senator B. Johnson

For An Act To Be Entitled

AN ACT TO AMEND THE ENVIRONMENTAL COMPLIANCE RESOURCE ACT; TO CLARIFY THE AUTHORITY OF AN ENVIRONMENTAL COMPLIANCE OFFICER AND THE ENVIRONMENTAL VIOLATIONS CITED BY ENVIRONMENTAL OFFICERS; TO CLARIFY THE JUDICIAL VENUE WHERE CITATIONS ARE REQUIRED TO BE FILED; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE ENVIRONMENTAL COMPLIANCE RESOURCE ACT; AND TO CLARIFY THE AUTHORITY OF AN ENVIRONMENTAL COMPLIANCE OFFICER, ENVIRONMENTAL VIOLATIONS CITED, AND THE JUDICIAL VENUE WHERE CITATIONS ARE FILED.

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

SECTION 1. Arkansas Code § 8-6-2002 is amended to read as follows:

8-6-2002. Purpose.

The purpose of this subchapter is to protect the public health, safety, and welfare of the state by:

(1) Improving the operational efficiency of the Division of Environmental Quality concerning the resources provided to local governments and other state agencies, boards, and commissions;

(2) Creating the Environmental Compliance Resource Program ~~as a consolidated program~~ to be administered by the division to provide resources



to local governments and other state agencies, boards, and commissions;

(3) Ensuring that cities, municipalities, counties, regional solid waste management districts, and state agencies, boards, and commissions have sufficient resources;

(4) Authorizing the division to develop, implement, and administer an Environmental Compliance Resource Program; and

(5) Modernizing, simplifying, and clarifying the law related to illegal dumping of solid waste and other similar issues that affect the public health, safety, and welfare.

SECTION 2. Arkansas Code § 8-6-2003 is amended to read as follows:
8-6-2003. Definitions.

(a) To the extent that there is no conflict with the definitions in subsection (b) of this section, this subchapter incorporates and adopts the definitions of terms defined in Title 8, Chapter 6.

(b) As used in this subchapter:

(1) "Alleged violator" means a person that has been issued an environmental citation under this subchapter by an environmental officer;

(2) "Cost statement" means a verified written statement that accounts for the cost of solid waste removal or other remediation, including without limitation receipts, and establishes that:

(A) The solid waste was removed from the location or the environmental violation at the location was otherwise remediated; and

(B) The solid waste was properly disposed of at one (1) or more of the following facilities:

(i) A permitted solid waste disposal facility;

(ii) A permitted solid waste processing facility;

(iii) A recycling center;

(iv) A scrap yard that purchases iron, steel, aluminum, or other metals; or

(v) Any other facility that ~~an environmental officer~~ the Division of Environmental Quality finds to be a proper disposal facility for the solid waste;

(3) "Environmental officer" means an employee of a city, county, municipality, regional solid waste management district created under § 8-6-701 et seq., or state agency, board, or commission who has+

~~(A) Completed~~ completed all requirements under this subchapter, including without limitation completing required training and passing the required examination, obtaining certification, being sworn in, and maintaining certification through continuing education; ~~and~~

~~(B) Authority to enter land to investigate and inspect as provided under § 8-1-107 to enforce environmental laws under the authority of the Division of Environmental Quality;~~

(4) "Environmental violation" means an act or omission that:

(A) Is prohibited under § 8-6-2005; or

(B) Causes or results in the violation of a state law, rule, or order that is:

(i) Designed to protect the public health, safety, or welfare; and

(ii) Applicable to this subchapter under § 8-6-2004;

(5) ~~"Illegal dumping of solid waste"~~ "Illegal disposal of solid waste" or "illegal dumping of solid waste" means:

(A) The illegal ~~placing~~ abandoning, depositing, releasing, dumping, spilling, leaking, or causing to be placed, deposited, or dumped by a person placing of any solid waste into or on any land or water so that the solid waste or any constituent of the solid waste may enter the environment or be emitted into the air or discharged into any waters of the state; or

(B) Causing any solid waste to be abandoned, deposited, released, dumped, spilled, leaked, or placed into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters of the state that is prohibited by this chapter;

~~(A) In or upon a public or private highway, road, or street, including a portion of the right of way in or upon a public or private highway, road, or street;~~

~~(B) In or upon private property into or upon which the public is admitted by easement or license of the private property;~~

~~(C) In or upon a public park or other public property; or~~

~~(D) Upon property for which a permit has not been issued by the division;~~

(6)(A) "Illegal dump site" means a place where solid waste is disposed of in a manner that is prohibited by this chapter.

(B) "Illegal dump site" includes a place where one (1) or more of the following exists:

- (i) An attractive nuisance;
- (ii) A fire, health, or safety hazard;
- (iii) A potential source of surface or groundwater contamination;
- (iv) A waste tire site as defined in § 8-9-402; or
- (v) Other contamination that is hazardous to the public health or endangers the environment; and

(7) "Person" means an individual, municipality, other governmental entity, or other entity that is recognized by law with rights and duties.

SECTION 3. Arkansas Code § 8-6-2004 is amended to read as follows:
8-6-2004. Applicability.

This subchapter applies to ~~the enforcement of illegal dumping of solid waste in violation of this subchapter~~ violations of this chapter, violations of Chapter 6 of Arkansas Pollution Control and Ecology Commission Rule 18, and violations of the Used Tire Recycling and Accountability Act, § 8-9-401 et seq.

SECTION 4. Arkansas Code § 8-6-2005 is amended to read as follows:
8-6-2005. Prohibited conduct.

An act or omission that results in one (1) or more of the following in this state is prohibited by this subchapter:

- (1) The illegal dumping of solid waste ~~on public or private property~~ or illegal disposal of solid waste;
- (2) The creation or participation in the creation or furtherance of an illegal dump site;
- (3) The illegal disposal of solid waste or illegal dumping of solid waste that has resulted from a property owner's own household activities on his or her own land if the disposal:
 - (A) Creates a public or private nuisance;
 - (B) Is a hazard to health; or
 - (C) Involves the open dumping of garbage; or
- (4) Any other environmental violation applicable to this

subchapter under § 8-6-2004.

SECTION 5. Arkansas Code § 8-6-2009(b), concerning promulgation of an environmental citation form, is amended to read as follows:

(b) Subsection (a) of this section does not prohibit a municipality, city, county, or regional solid waste management district from promulgating citation forms for use in enforcement of violations of their local ordinances or bylaws ~~for violations other than environmental violations.~~

SECTION 6. Arkansas Code § 8-6-2011 is amended to read as follows:

8-6-2011. Environmental officer authority.

(a) An environmental officer under this subchapter may perform one (1) or more of the following duties to ensure compliance with and enforcement of this subchapter:

(1) ~~Enter~~ Upon a showing of probable cause regarding environmental violations, and subject to the administrative warrant requirements in subsection (c) of this section, enter upon any public or private property within the state to inspect suspected illegal dump sites, littering, or related complaints for the purpose of obtaining information or conducting investigations or inspections;

(2) ~~Enter public or private property to collect~~ Collect evidence of illegal dumping of solid waste and littering and present the evidence to the prosecuting attorney or a court of competent jurisdiction where the offense was committed; and

(3) Perform all other duties specified in this subchapter necessary for the administration and enforcement of this subchapter.

(b) An environmental officer, acting solely under his or her authority as granted in this subchapter, shall not have the power of arrest.

(c)(1) When an environmental officer obtains information that supports probable cause to believe that a violation of a law within his or her regulatory authority is being or has been violated, the environmental officer may demand entry onto any property, public or private, to conduct inspections.

(2) If consent to inspect is denied, the environmental officer may obtain an administrative warrant from a judicial officer.

(3) The issuance and execution of an administrative warrant

under subdivision (c)(2) of this section shall be as follows:

(A) A judge or magistrate otherwise authorized to issue search warrants within his or her jurisdiction may, upon proper oath or affirmation showing probable cause, issue an administrative warrant for the purpose of conducting inspections authorized by this subchapter;

(B)(i) A judge or magistrate shall issue an administrative warrant only upon an affidavit of an environmental officer having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the administrative warrant.

(ii) If the judge or magistrate is satisfied that grounds for the application for an administrative warrant exist or that there is probable cause to believe the grounds exist, he or she shall issue an administrative warrant identifying the site to be inspected, and the purpose of the inspection.

(iii) The administrative warrant shall:

(a) State the grounds for its issuance and the name of each person whose affidavit has been taken in support of the inspection;

(b) Be directed to an environmental officer;

(c) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified;

(d) Specifically identify any documents or samples to be gathered during the inspection;

(e) Direct that it be served during normal business hours unless emergency or extraordinary circumstances compel otherwise; and

(f) Designate the judge or magistrate to whom it shall be returned;

(C)(i) If appropriate, the administrative warrant may authorize the review and copying of documents that may be relevant to the purpose of the inspection.

(ii)(a) If documents must be seized for the purpose of copying, the person serving the administrative warrant shall prepare an inventory of documents taken.

(b) The inventory shall be made in the

presence of the person executing the administrative warrant and of the person from whose possession or facility the documents were taken, if present, or in the presence of at least one (1) credible person other than the person executing the administrative warrant.

(c) A copy of the inventory shall be delivered to the person from whom or from whose site the documents were taken.

(iii) The seized documents shall be copied as soon as feasible under circumstances preserving their authenticity, then returned to the person from whom the documents were taken;

(D)(i) The administrative warrant may authorize the taking of samples of materials generated, stored, or treated at the site.

(ii) The person executing the administrative warrant shall prepare an inventory of all samples taken.

(iii) In any inspection conducted pursuant to an administrative warrant in which samples are taken, the environmental officer shall make split samples available to the person whose site is being inspected;

(E)(i) An administrative warrant issued pursuant to this section is required to be executed and returned within ten (10) days of its date unless, upon a showing of a need for additional time, the judge or magistrate orders otherwise.

(ii) The return of the administrative warrant shall be made promptly, accompanied by a written inventory of any documents or samples taken;

(F) The judge or magistrate who has issued an administrative warrant shall attach to the administrative warrant a copy of the return and all papers returnable in connection with the administrative warrant and file them with the clerk of the circuit court or district court for the judicial district in which the inspection was made; and

(G) A copy of the administrative warrant and all supporting affidavits shall be provided to the person served or left at the entry of the site inspected.

(d) Notwithstanding subsection (c) of this section, an administrative warrant is not required for any inspection under the following circumstances:

(1) If the owner, operator, or agent in charge of the site consents;

(2) In situations presenting imminent danger to public health and safety or the environment;

(3) In situations involving inspection of conveyances, if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain an administrative warrant;

(4) In any other exception or emergency circumstance when time or opportunity to apply for an administrative warrant is lacking;

(5) In situations involving conditions that may be observed in an open field, from an area practically open to public access, or in plain view; or

(6) In all other situations in which an administrative warrant is not constitutionally required.

SECTION 7. Arkansas Code § 8-6-2012 is amended to read as follows:

8-6-2012. Issuing an environmental citation.

(a) An environmental officer shall use the uniform environmental citation form ~~under~~ referenced in § 8-6-2009 to issue a citation for an alleged environmental violation under this ~~subchapter~~ chapter.

(b) An environmental officer may issue a citation for an alleged environmental violation ~~of this subchapter to an alleged violator~~ committed within the territorial jurisdiction of the environmental officer's employer.

SECTION 8. Arkansas Code § 8-6-2013 is amended to read as follows:

8-6-2013. Filing an environmental citation.

A citation for an alleged environmental violation issued by an environmental officer shall be filed in a ~~district~~ court of competent jurisdiction in the county where the alleged environmental violation was committed.

SECTION 9. Arkansas Code § 8-6-2014 is amended to read as follows:

8-6-2014. Serving an environmental citation.

A citation for an alleged environmental violation issued under this ~~subchapter~~ chapter shall be served in person or by mailing a copy of the citation by certified mail, ~~restricted delivery~~, to either the address obtained from evidence collected from the environmental violation location or to the last known address of the alleged violator.

SECTION 10. Arkansas Code § 8-6-2015 is amended to read as follows:

8-6-2015. Hearing on an environmental citation – Penalties.

(a)(1)(A) Except as provided under subdivision (a)(2) of this section, the alleged violator shall appear before the ~~district~~ court named within the citation at the location and time designated in the citation.

(B) The initial hearing shall occur no later than thirty (30) days after the time period expires for remediation of the alleged environmental violation.

(2) If, as verified by the environmental officer, the alleged environmental violation is remediated by the alleged violator within the time period established under § 8-6-2016 using the procedure under this subchapter, the ~~district~~ court shall dismiss the matter from the docket without hearing.

(3) If the environmental officer extends the time period for remediation under § 8-6-2016(c), the ~~district~~ court shall reschedule the hearing for not more than thirty (30) days after the extension for remediation.

(b) A ~~district~~ court having of competent jurisdiction over a citation issued by an environmental officer may issue penalties under § 8-6-204 ~~and may grant an available remedy referenced in this subchapter unless the remedy is not available to the district court.~~

(c)(1) A judgment entered under this subchapter:

(A) May be enforced in the same manner as any other judgment; and

(B) Is a final decision for purposes of appellate review.

(2) A person against which the judgment is entered by a district court may appeal the decision to circuit court.

(d) A judgment entered under this subchapter does not preclude claims under § 8-6-206 by another person.

SECTION 11. Arkansas Code § 8-6-2016(c)(2), concerning an extension of the time period for remediation procedures of an environmental citation, is amended to read as follows:

(2) If the environmental officer extends the time period under subdivision (c)(1) of this section, the environmental officer shall notify

the ~~district~~ court with jurisdiction over the environmental citation hearing under § 8-6-2015 and request rescheduling of the hearing.

SECTION 12. Arkansas Code § 8-6-2016(e) and (f), concerning remediation procedures for environmental violations under the Environmental Compliance Resource Act, are amended to read as follows:

(e)(1) If the alleged violator has removed the solid waste ~~or~~, remediated the environmental violation, and presented a cost statement to the environmental officer, the environmental officer shall file an affidavit with the ~~district~~ court that establishes that the environmental violation has been remediated and the environmental citation is withdrawn.

(2) The affidavit shall include the cost statement and the results of an investigation that the environmental officer has completed at the location of the environmental violation.

(f) After filing the affidavit under subsection (e) of this section, the environmental officer shall notify the ~~district~~ court that the hearing required under § 8-6-2015 is unnecessary and the environmental citation has been withdrawn.

SECTION 13. Arkansas Code § 8-6-2017(a), concerning fines and costs for violations of the Environmental Compliance Resource Act, is amended to read as follows:

(a) If fines and costs are not paid for judgments for violations of this ~~subchapter~~ chapter, the party that has not paid the fines and costs is subject to an administrative or civil enforcement action under law or rule, or both.

SECTION 14. Arkansas Code § 8-6-2019(a), concerning an exemption in the Environmental Compliance Resource Act for agriculture, is amended to read as follows:

(a) Except as provided under subsection (b) of this section, ~~the Arkansas Solid Waste Management Act, § 8-6-201 et seq., this subchapter, and § 8-6-901 et seq., do~~ does not apply to:

(1) The disposal of solid waste if the disposal:

(A) Results from operations of farms, grain elevators, cotton gins, and similar industries;

(B) Is at a place where agricultural gleanings and crop residue that result from operations of farms, grain elevators, cotton gins, and similar industries are being land applied in accordance with current management practices of the industries or the agricultural community; and

(C) Has been authorized and consented to by the landowner;
or

(2) A landowner who disposes of solid waste on the property where the solid waste results from agricultural or farming operations or household operations.

/s/Vaught

APPROVED: 4/19/21