

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
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As Engrossed H3/18/13
A Bill

HOUSE BILL 1929

By: Representatives Davis, Alexander, D. Altes, C. Armstrong, E. Armstrong, Baine, Ballinger, Baltz, Barnett, Bragg, Branscum, J. Burris, Clemmer, Cozart, Dotson, C. Douglas, Eubanks, Farrer, Ferguson, Gillam, Harris, Hickerson, Hobbs, House, Hutchison, Jett, Lea, Lowery, McElroy, D. Meeks, S. Meeks, Miller, Neal, Payton, Ratliff, Rice, Steel, Wardlaw, Westerman, B. Wilkins, Wren

By: Senators D. Sanders, Burnett, Caldwell, E. Cheatham, J. Dismang, J. English, Files, K. Ingram, Irvin, B. King, B. Sample, D. Wyatt

For An Act To Be Entitled

AN ACT TO AMEND THE LAWS PERTAINING TO THE
PROMULGATION OF WATER QUALITY STANDARDS; TO IMPROVE
THE PROCESS FOR DEVELOPING AND IMPLEMENTING WATER
QUALITY STANDARDS; TO DECLARE AN EMERGENCY; AND FOR
OTHER PURPOSES.

Subtitle

TO AMEND THE LAWS PERTAINING TO THE
PROMULGATION OF WATER QUALITY STANDARDS;
TO IMPROVE THE PROCESS FOR DEVELOPING AND
IMPLEMENTING WATER QUALITY STANDARDS; AND
TO DECLARE AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that:

(1) Under current interpretations by the United States Environmental Protection Agency, the development, implementation, and assessment of water quality standards required under the Clean Water Act, 33 U.S.C. § 1251 et seq., are to be based on sound scientific and statistical principles, among other things, and should consider readily available data



that is consistent with and relevant to the water use to be maintained;

(2) Federal law requires the consideration of certain relevant factors, including natural variability and statistical variability over periods of time that are relevant to the water use to be maintained;

(3) After consideration of readily available data, reliance on data that is not significant or meaningful, is incomplete, is not indicative of conditions relevant to the water use to be maintained, is speculative, is inconclusive or reasonably supportive of different conclusions, or is otherwise not well-suited to the purpose for which it is being used, has the potential to lead to unnecessary regulation and the inefficient use and allocation of scarce resources;

(4) The State of Arkansas has a well-developed and long-standing program of sampling the quality of waters subject to various uses;

(5) There is a rational basis found in sound scientific and statistical principles for using long-term averages in assessing mineral concentrations in a stream;

(6) The Arkansas Department of Environmental Quality's analysis of data from Arkansas streams demonstrates that four cubic feet per second (4 ft³/s) is the median flow for small streams, which makes this measure an appropriate indicator for stream flow when long-term flow data is not available, thereby avoiding unnecessary regulation and the inefficient use of state resources;

(7) It is appropriate and consistent with sound scientific and statistical principles to use the greater of long-term average flows or four cubic feet per second (4 ft³/s) for assessing mineral concentrations in streams; and

(8) Because of the existing technological and economic limits on treatability of dissolved minerals and the likely localized economic impacts of the treatability requirement, it is an inefficient use of scarce resources to apply domestic water supply uses and criteria to streams, stream segments, or other bodies of water that do not have an existing domestic water supply use or that do not have a demonstrated and reasonable potential to be used as a domestic water supply source.

(b) The intent of this act is to:

(1) Provide for the consideration of existing and readily available data and information relevant to the development, implementation,

and assessment of water quality standards for minerals;

(2) Provide standards for determining the data that should be considered and relied on by the State of Arkansas and its agencies for the development, implementation, and assessment of water quality standards for minerals; and

(3) Direct state agencies to support the development, implementation, and assessment of water quality standards according to the provisions of this act.

SECTION 2. Arkansas Code § 8-4-202(b)(3), concerning the rules and regulations the Arkansas Pollution Control and Ecology Commission may promulgate with respect to water pollution, is amended to read as follows:

(3)(A) Water quality standards, performance standards, and pretreatment standards.

(B) Water quality standards for minerals adopted under subdivision (b)(3)(A) of this section shall comply with the following requirements without precluding the evaluation of existing and readily available water quality-related data:

(i) The development and implementation of standards and criteria for minerals, including without limitation total dissolved solids, chlorides, and sulfates, and the assessment of a stream's or a stream segment's conformity with or attainment of a standard or criteria for minerals shall be based on the greater of the average flow in the stream or stream segment or four cubic feet per second (4 ft³/s);

(ii) The development and implementation of standards or criteria for minerals, including without limitation total dissolved solids, chlorides, and sulfates, in order to protect the use of a domestic water supply, and the assessment of a stream's or a stream segment's conformity with or protection of the use of a domestic water supply shall be based on the greater of the average flow in the stream or stream segment or four cubic feet per second (4 ft³/s);

(iii) The assessment of a stream, stream segment, lake, or reservoir by the Arkansas Department of Environmental Quality for conformity with or attainment of a water quality standard for minerals for purposes of 33 U.S.C. § 1313(d) shall be based on the average concentration of minerals in the stream, stream segment, lake, or reservoir using at least

sixty (60) actual measured samples taken at regular intervals over at least a five-year period;

(iv)(a) Except as provided in subdivision (b)(3)(B)(iv)(b) of this section, a water quality standard to protect or maintain the use of a domestic water supply may be developed and implemented only for a stream segment, lake, or reservoir that:

(1) Has an existing use as a domestic water supply; or

(2) Is listed in the Arkansas Water Plan as a planned or potential domestic water supply.

(b) The domestic water supply use shall be designated for all bodies of water within the watershed of a lake or reservoir used as a public water supply unless the designated use is or has been removed under the regulations of the commission.

(c) The commission shall regularly publish in Regulation No. 2 a list of the stream segments or reservoirs to which subdivision (b)(3)(B)(iv)(a) of this section applies;

(v)(a) Before commencing a study that would purport to allocate loads for permissible discharges to a stream, stream segment, lake, or reservoir in order to conform to a water quality standard, including without limitation a total maximum daily load study under 33 U.S.C. § 1313(d), the person conducting the study shall give written notice to all persons who are permitted to discharge directly or indirectly into the stream, stream segment, lake, or reservoir.

(b) The notice required under subdivision (b)(3)(B)(v)(a) of this section shall:

(1) Identify the person responsible for conducting the study;

(2) Explain the purpose of the study and the method that will be used to conduct the study; and

(3) Provide instructions on obtaining additional information about the study.

(c) At the time a draft report of the study under this subdivision (b)(3)(B)(v) is prepared, a copy of the draft report shall be sent to each:

(1) Person that holds a permit to

discharge into the stream, stream segment, lake, or reservoir;

(2) Public drinking water treatment system whose source water's watershed contains the stream, stream segment, lake, or reservoir; and

(3) Person that has requested a copy of the results or report of the study.

(d) Before the study under this subdivision (b)(3)(B)(v) is finalized, the Arkansas Department of Environmental Quality shall conduct a public hearing on the study if requested by a:

(1) Person holding a permit to discharge to the stream, stream segment, or reservoir; or

(2) Public drinking water treatment system whose source water's watershed contains the stream, stream segment, lake, or reservoir.

(e) A study conducted under this subdivision (b)(3)(B)(v) shall not establish a waste load allocation for a stream, stream segment, lake, or reservoir for purposes of protecting the use of a domestic water supply unless the department has first certified that:

(1) There is an existing domestic water supply use for the stream, stream segment, lake, or reservoir; or

(2) The stream segment or reservoir is listed in the Arkansas Water Plan as a planned or potential domestic water supply;

(vi) Within thirty (30) days after the receipt of an application for an individual permit to discharge into a stream, stream segment, or reservoir, the department shall certify to the permit applicant whether the stream segment or reservoir that will receive the proposed discharge is:

(a) An existing domestic water supply; or

(b) Listed in the Arkansas Water Plan as a planned or potential domestic water supply; and

(vii) The values for dissolved minerals listed in Arkansas Pollution Control and Ecology Commission Regulation No. 2, § 2.511(B) shall not be used to evaluate or assess the attainment of water quality standards.

(C) A term or provision in a National Pollutant Discharge

Elimination System permit or an order related to a National Pollutant Discharge Elimination System permit that exists as of the effective date of this act but that has not yet become effective and does not comply with or was not developed according to subdivisions (b)(3)(B)(i)-(iv) of this section shall be:

(i) Stayed upon application to the commission by a person regulated under the noncompliant National Pollutant Discharge Elimination System permit term or condition or an order related to the noncompliant National Pollutant Discharge Elimination System permit; or

(ii) Waived upon application to the commission by a person regulated under the noncompliant National Pollutant Discharge Elimination System permit term or condition or an order related to the noncompliant National Pollutant Discharge Elimination System permit until an applicable National Pollutant Discharge Elimination System permit term or condition or an order related to an applicable National Pollutant Discharge Elimination System permit that complies with subdivisions (b)(3)(B)(i)-(iv) of this section becomes effective.

/s/Davis