

1 State of Arkansas
2 89th General Assembly
3 First Extraordinary Session, 2013
4

A Bill

Call Item 8
HOUSE BILL 1002

5 By: Representative Davis
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAWS PERTAINING TO WATER QUALITY
9 STANDARDS; TO REPEAL ACT 954 OF 2013; TO DECLARE AN
10 EMERGENCY; AND FOR OTHER PURPOSES.
11

Subtitle

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14 TO AMEND THE LAWS PERTAINING TO WATER
15 QUALITY STANDARDS; TO REPEAL ACT 954 OF
16 2013; AND TO DECLARE AN EMERGENCY.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 8-4-202(b)(3), concerning the rules and
22 regulations the Arkansas Pollution Control and Ecology Commission may
23 promulgate with respect to water quality, is amended to read as follows:

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

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

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

36 ~~(ii) The development and implementation of standards~~



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

7 ~~(iii) The assessment of a stream, stream segment,~~
8 ~~lake, or reservoir by the department for conformity with or attainment of a~~
9 ~~water quality standard for minerals for purposes of 33 U.S.C. § 1313(d) shall~~
10 ~~be based on the average concentration of minerals in the stream, stream~~
11 ~~segment, lake, or reservoir using at least sixty (60) actual measured samples~~
12 ~~taken at regular intervals over at least a five-year period;~~

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

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

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

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

25 ~~(c) The commission shall regularly publish in~~
26 ~~Arkansas Pollution Control and Ecology Commission Regulation No. 2 a list of~~
27 ~~the stream segments or reservoirs to which subdivision (b)(3)(B)(iv)(a) of~~
28 ~~this section applies;~~

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

36 ~~(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 department 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~~

1 ~~segment, or reservoir, the department shall certify to the permit applicant~~
 2 ~~whether the stream segment or reservoir that will receive the proposed~~
 3 ~~discharge is:~~

4 ~~(a) An existing domestic water supply; or~~

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

7 ~~(vii) The values for dissolved minerals listed in~~
 8 ~~Arkansas Pollution Control and Ecology Commission Regulation No. 2, Reg.~~
 9 ~~2.511(B) shall not be used to evaluate or assess the attainment of water~~
 10 ~~quality standards.~~

11 ~~(C) A term or provision in a National Pollutant Discharge~~
 12 ~~Elimination System permit or an order related to a National Pollutant~~
 13 ~~Discharge Elimination System permit that exists as of August 16, 2013, but~~
 14 ~~that has not yet become effective and does not comply with or was not~~
 15 ~~developed according to subdivisions (b)(3)(B)(i)-(iv) of this section shall~~
 16 ~~be:~~

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

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

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 30 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
 31 General Assembly of the State of Arkansas that in response to the General
 32 Assembly's adoption of Act 954 of 2013, the United States Environmental
 33 Protection Agency has taken adverse action with respect to the Arkansas
 34 Department of Environmental Quality's ability to issue permits under the
 35 National Pollutant Discharge Elimination System Program; and that an immediate
 36 repeal of Act 954 of 2013 is necessary to alleviate such adverse action by the

1 agency. Therefore, an emergency is declared to exist, and this act being
2 immediately necessary for the preservation of the public peace, health, and
3 safety shall become effective on:

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

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

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

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