

2003 ENVIRONMENTAL LEGISLATION SUMMARY

Summary of Environmental-Related Legislation Adopted in the 2003 Arkansas Legislative Session

Act 51 – Revises the funding procedure for administrative hearing officer for the Arkansas Pollution Control and Ecology Commission (“APCEC”); expenses are to be paid from the Department of Environmental Quality Fee Fund, or from other sources as approved by law. *See* A.C.A. § 8-1-204(c). Effective date: 7/15/2003.

Act 79 – Appropriates \$400,000 to the Arkansas Department of Environmental Quality (“ADEQ”) for contract services to complete the Total Maximum Daily Load (“TMDL”) for all impaired waters in the state to meet the quality standards of the Federal Clean Water Act. *See* 2001 Ark. Acts, No. 343, § 1. Effective date: 7/1/2003.

Act 133 – Requires delivery of public notice and a copy of any proposed order to the CEO of a municipality, if a civil penalty is to be assessed for a violation of the Arkansas Water and Air Pollution Control Act within the corporate limits of the municipality. Also provides the municipality with a reasonable opportunity to comment on the proposed order, consistent with the public notice and comment requirements of the Arkansas Water and Air Pollution Control Act. *See* A.C.A. §§ 8-4-101 *et seq.* Effective date: 7/15/2003.

Act 215 – Allows for formation of a quorum for solid waste planning districts by proxy in addition to in person. *See* A.C.A. § 8-6-703(c)(5)(A). Effective date: 7/15/2003.

Act 276 – Raises the threshold for annual aggregate payments for oil and gas proceeds from \$25.00 to \$100.00. *See* A.C.A. § 15-74-601(b). Effective date: 7/15/2003.

Act 282 – Amends the creation of city boards of health and city health officers to make them permissive on cities rather than mandatory. *See* A.C.A. §§ 14-262-102(a), -103. Effective date: 7/15/2003.

Act 297 – Increases civil and criminal penalties for violations of water well construction laws. Updates water well construction laws and pump installer and well driller certification. Creates an apprenticeship program for training prospective pump installers and water well drillers. *See* A.C.A. §§ 17-50-101 *et seq.*, -301 *et seq.* Effective date: 7/1/2003.

Act 298 – Establishes that the state does not waive its sovereign immunity when it enters into settlement negotiations or discusses the possibility of settlement, including class action suits. Effective date: 3/4/2003.

Act 342 – Authorizes and grants eminent domain to sanitation authorities to operate wastewater facilities, under the Joint County and Municipal Solid Waste Disposal Act. *See* A.C.A. § 14-233-107. Effective date: 7/15/2003.

Act 358 – Amends mine safety testing to allow for comparable testing in other jurisdictions to satisfy requirements for certification by the Department of Labor. *See* A.C.A. § 11-7-403(a). Effective date: 7/15/2003.

Act 461 – Eliminates the requirement that the State Mine Inspector have an office in Fort Smith. *See* A.C.A. § 11-7-205(a). Effective date: 7/15/2003.

Act 465 – Transfers all functions of the Safe Drinking Water Fund to the Arkansas Soil and Water Conservation Commission (“ASWCC”). Allows expenditures for health effects studies, unregulated contaminant monitoring, small system technical assistance, and training certification. Authorizes the Commission to refinance loans. Repeals A.C.A. §§ 15-5-1001 *et seq.* *See* A.C.A. §§ 15-22-1101 *et seq.* Effective date: 7/1/2003.

Topical Index

ADEQ	Acts 79, 486, 1193, 1337
Adverse Possession	Act 861
Agricultural Liens	Act 1726
Alternative Fuels	Act 1287
APC&EC	Acts 51, 1180
AS&WCC.....	Acts 465, 548, 598, 745, 1059, 1060, 1061
Biodiesel	Act 1287
Biological Agents	Act 1080
Boards of Health	Act 282
Boll Weevil Eradication	Act 1726
Bonds	Acts 486, 598
Brownfields	Acts 1193, 1194
Civil Justice Reform Act	Act 649
Computer& Electronic Waste	Act 1028
Construction Assistance	Act 548
Health Department ...	Acts 1080, 1270, 1774
Eminent Domain	Act 342
Explosives	Act 849
Fire Departments	Act 655
Floods/Floodplains	Act 745
FOIA	Acts 763, 1210, 1366
Game & Fish Commission	Act 799
Highways	Act 849
Homeland Security	Act 1306
Levee Districts.....	Act 861
Licensing	Acts 1080, 1119
Loans and Grants..	Acts 465, 548, 1193, 1194, 1287
Marine Sanitation	Act 1774
Methamphetamine	Act 1270
Mining	Acts 358, 461, 993
Municipalities.....	Acts 133, 282, 1297, 1366, 1719
Navigable Waters	Acts 1101, 1774
Nonpoint sources	Act 548
Oil and Gas.....	Acts 276, 964, 1114, 1279, 1307, 1763
Penalties/Fines.....	Acts 133, 297, 486, 745, 799, 855, 1114
Poultry & Livestock .	Acts 1059, 1060, 1061
Property Rights.....	Acts 342, 861, 964, 1279, 1307
Radioactive Materials	Act 1119
Safe Drinking Water	Act 465
Settlements	Act 298
Solid Waste.....	Acts 215, 342, 672, 1027, 1028, 1101, 1304, 1337
Sovereign Immunity	Act 298
Tax Credits	Acts 993, 1287
Tires	Act 1304
TMDLs	Act 79
Torts	Acts 298, 649, 1114, 1471
USTs	Acts 486, 1114
Wastewater Facilities	Acts 342, 1297
Water Wells	Acts 297, 855
Water.....	Acts 79, 465, 1059, 1060, 1061, 1180, 1774
Waterworks Facilities ..	Acts 549, 763, 1210
Wetlands	Act 548
Whistle-blowers	Act 601

- Act 486** – Amends the penalties the ADEQ is authorized to assess against installers and testers of underground storage tanks (“USTs”) to include forfeiture of a surety bond. *See* A.C.A. § 8-7-806. Effective date: 7/15/2003.
Effective date: 3/25/2003.
- Act 548** – Transfers all functions of the Construction Assistance Revolving Loan Fund to the ASWCC. Allows expenditures for nonpoint source management facilities and wetlands conservation and management facilities. Authorizes the Commission to refinance loans. Repeals A.C.A. §§ 8-5-301 *et seq.* Repeals the Water Pollution Control State Grant Act of 1972, A.C.A. §§ 8-5-401 *et seq.* *See* A.C.A. §§ 15-5-901 *et seq.* Effective date: 7/1/2003.
- Act 549** – Allows a public facilities board to sell or transfer waterworks facilities to, or purchase waterworks facilities from, a public body created under the Consolidated Waterworks Authorization Act with no bidding and appraisal requirements. *See* A.C.A. § 14-137-111(b). Effective date: 7/15/2003.
- Act 598** – Authorizes the ASWCC to issue bonds for various funds managed by the Commission. Repeals the previous authorization for issuing bonds. *See* A.C.A. §§ 15-22-1301 *et seq.* Effective date: 7/15/2003.
- Act 601** – Amends the Arkansas whistle-blower act to protect public employees who communicate misfeasance with regard to federal funds, property, or labor administered by a public employer. *See* A.C.A. § 21-1-603(a). Effective date: 7/15/2003.
- Act 649** – The Civil Justice Reform Act of 2003 makes several changes to the laws governing civil tort actions in the areas of joint and several liability, fault assessment, comparative fault, punitive and compensatory damages, venue, appeal bonds, burden of proof, false pleadings, and statutes of limitation. *See* A.C.A. §§ 16-114-208 to -212.
- Act 655** – Establishes that volunteer fire departments have no duty to respond to fires on forest or grass lands owned by nonmembers of the fire district, unless: the fire poses an immediate threat to property of a district member or any person’s life, there is a written agreement between the owner and fire department requiring response, or the fire is in violation of a fire ban. *See* A.C.A. § 20-22-901(a). Effective date: 7/15/2003.
- Act 672** – Allows Solid Waste Management Districts to issue Certificates of Need in excess of 30 years. *See* A.C.A. § 8-6-706(d). Effective date: 7/15/2003.
- Act 745** – Requires each municipality subject to the Flood Loss Prevention Act to appoint a floodplain administrator. Details the process by which the ASWCC shall accredit floodplain administrators and requires each to be accredited by July 1, 2004. Increases the penalty for violations of the Flood Loss Prevention Act. Clarifies that violations of the act are those that prohibit land development by adding improvements subject to flood damage or hazards. *See* A.C.A. §§ 14-268-102, -103, -106, 15-24-102(a), -109. Effective date: 7/15/2003.
- Act 763** – Exempts from the Arkansas Freedom of Information Act records relating to the security of any public water system. Terms of this act will expire on July 1, 2005. *See* A.C.A. §§ 25-19-103, -105(b)(15), -106(c). Effective date: 3/27/2003.
- Act 799** – Allows the Arkansas Game and Fish Commission to use funds collected from fines to issue grants to the Arkansas Department of Education to fund education programs for wildlife conservation and other purposes consistent with Amendment 35 of the Arkansas Constitution. *See* A.C.A. §§ 6-16-1101, 15-41-209(d). Effective date: 7/15/2003.
- Act 849** – Delegates regulation of transportation of explosives over state highways to the State Highway Commission and eliminates the previous requirements of warning signs and fire extinguishers. *See* A.C.A. § 27-37-203. Effective date: 7/15/2003.
- Act 855** – Authorizes the Commission on Water Well Construction to take possession of all property (real property excluded) used or intended to be used in operations that violate the Arkansas Water Well Construction Act. The property may be auctioned and the proceeds split between the commission and the acting law enforcement agency after payment of any liens and costs. The commission may also seize profits and proceeds derived from any violations. *See* A.C.A. §§ 17-50-101 *et seq.*, -401 *et seq.* Effective date: 3/28/2003.
- Act 861** – Protects the real property rights of levee district property against any claims of adverse possession brought after the effective date of the act. *See* A.C.A. § 22-1-206. Effective date: 7/15/2003.
- Act 964** – Amends the definition of “drilling unit” to mean a single governmental section, unless the owner requests a larger or smaller area and gets the area established by an order of the Oil and Gas Commission. Authorizes the Commission to designate the number of

and regulate the spacing between wells drilled and produced in a drilling unit. Allows for drilling of wells not in compliance with the Commission's rules, provided that the Commission finds, after notice and a hearing, that the well is likely to prevent waste or protect the rights of owners within the drilling unit. *See* A.C.A. § 15-72-302. Effective date: 7/15/2003.

Act 993 – Gives a tax credit to coal mining enterprises of \$2.00/ton for any coal mined and \$3.00/ton for coal mined in excess of 50,000 tons. The credit is earned only if the coal is sold to an electric plant for less than \$40.00/ton, excluding freight charges. *See* A.C.A. § 26-51-511. Effective date: 7/15/2003.

Act 1027 – Amends the Solid Waste Management and Recycling Fund Act to distribute funds according to the most recent federal census data. *See* A.C.A. § 8-6-609. Effective date: 7/15/2003.

Act 1028 – Allows agencies, under the Arkansas Computer Electronic Solid Waste Management Act, to donate unsold surplus computer and electronic equipment to law enforcement agencies. *See* A.C.A. § 25-34-107. Effective date: 7/15/2003.

Act 1059 – Authorizes the ASWCC to train and certify persons to develop application plans, and to train and certify applicators, to apply litter and fertilizers to soil. The act is mandatory in certain “nutrient surplus areas” (designated in A.C.A. §§ 15-20-1003(10), -1104) and voluntary in all others. *See* A.C.A. §§ 15-20-1001 *et seq.* Effective date: 7/15/2003.

Act 1060 – Directs the ASWCC to form and maintain a registry of poultry feeding operations, of at least 2,500 birds, to track the production and management of litter to minimize the pollution resulting from poultry waste products. *See* A.C.A. § 15-20-901 *et seq.* Effective date: 7/15/2003.

Act 1061 – Creates the Arkansas Soil Nutrient Application and Poultry Litter Utilization Act under the authority of the ASWCC. The Act requires compliance with 2003 Ark. Acts, No. 1059 (certified plan and certified applicator) for any application of designated nutrients and/or poultry litter to soil in nutrient surplus areas. *See* A.C.A. §§ 15-20-1101 *et seq.* Effective date: 7/15/2003.

Act 1080 – Creates the Arkansas Biological Agent Registry Act, which requires the Arkansas Department of Health (“ADH”) to register biological agents possessed and maintained in the state. *See* A.C.A. §§ 26-31-101 *et seq.* Effective date: 4/3/2003.

Act 1101 – Authorizes the use and possession of glass containers for medicinal substances and the possession of glass previously discarded by others, within a vessel on navigable waterways. The former must be contained in a first-aid kit and the latter must be secured in a trash container for the exceptions to apply. *See* A.C.A. § 8-6-418. Effective date: 7/15/2003.

Act 1114 – Increases the maximum payment for corrective action from the Petroleum Storage Tank Trust Fund from \$1 million to \$1.5 million. Exempts bankrupt or insolvent owners and operators from the \$7,500 deductible for payments from the fund for third party claims for compensatory damages. *See* A.C.A. §§ 8-7-907(b), -908(a)(1). Effective date: 4/7/2003.

Act 1119 – Amends the law concerning the licensing and registration of radioactive materials to include accelerators and general licensed devices and relaxes license renewal periods. *See* A.C.A. §§ 20-21-213, -217. Effective date: 7/15/2003.

Act 1180 – Amends the chloride standard for streams to call for intervention by the APCEC only when the chloride standard has been exceeded as a result of a violation of the subchapter on Underground Salt Water Disposal Systems. *See* A.C.A. § 8-5-504, *See generally* A.C.A. §§ 8-5-501 *et seq.* Effective date: 7/15/2003.

Act 1193 – Authorizes the ADEQ to issue loans and grants for the improvement of abandoned industrial, commercial, or agricultural sites. *See* A.C.A. § 8-7-1103(b). Effective date: 7/1/2003.

Act 1194 – Creates the Arkansas Brownfield Revolving Loan Fund Act, as authorized by 2003 Ark. Acts, No. 1193, and establishes the terms and conditions of the loan fund. *See* A.C.A. §§ 15-5-1501 *et seq.* Effective date: 7/1/2003.

Act 1210 – Authorizes the Board of Directors of a Regional Water Distribution District to hold its meetings in executive session, as allowed under A.C.A. § 25-19-106. *See* A.C.A. § 14-116-308. Effective date: 7/15/2003.

Act 1270 – Requires the ADH to develop guidelines for the clean up of former methamphetamine labs by April 1, 2004. Once established, the guidelines are to be available by request and on the ADH's website and reviewed and updated annually. Effective date: 7/15/2003.

Act 1279 – Authorizes the Commissioner of State Lands to sell any tax-delinquent severed mineral interests to the surface owner of the property for the amount of the delinquent taxes, without interest or penalties. The sale shall occur after the redemption period has expired and only if the surface owner did not own the mineral interests when the taxes became delinquent. *See* A.C.A. §§ 26-37-301 *et seq.* Effective date: 7/15/2003.

Act 1287 – Creates the Biodiesel Incentive Act, which provides an income tax credit for biodiesel suppliers and grants for biodiesel producers. *See* A.C.A. §§ 15-4-2801 *et seq.* Effective date: 7/15/2003.

Act 1297 – Authorizes municipalities and sanitation authorities to enter into contracts for the design, construction, and operation of various water treatment systems. Authorities shall solicit proposals and consider past performance and environmental compliance over the last five years in making their determination. *See* A.C.A. § 22-9-203(j). Effective date: 7/15/2003.

Act 1304 – Revises the law regarding waste tires by allowing fees for specialty tires, increasing disposal fees in general, use of most recent federal census data, and other changes. *See* A.C.A. §§ 8-9-402, -405(c). Effective date: 7/15/2003.

Act 1307 – Reduces the period after which unclaimed mineral proceeds are presumed abandoned from seven years to five years. *See* A.C.A. § 18-28-403(1)(a). Effective date: 7/15/2003.

Act 1337 – Allows class 1 and class 3c landfills to use alternative weighing systems, if approved by the ADEQ, to meet the requirements of installing scales and measuring received solid waste. *See* A.C.A. § 8-6-606(d)(1). Effective date: 7/15/2003.

Act 1366 – The Homeland Security Information Act establishes that the investigations, plans, and operations of city and county emergency service agencies responsible for threats of terrorism and weapons of mass destruction are not subject to public disclosure. The act expires on July 1, 2005. Effective date: 4/15/2003.

Act 1471 – Establishes that the limitation on punitive damages applies to each plaintiff. *See* 2003 Ark. Acts, No. 649, § 11. Effective date: 4/16/2003.

Act 1719 – Authorizes municipalities to assess and collect development impact fees on a new development to offset the costs of providing additional necessary public facilities to the new development. *See* A.C.A. § 14-56-102. Effective date: 7/15/2003.

Act 1726 – Amends the Arkansas Boll Weevil Suppression Eradication Act to ensure that each of the five eradication zones are represented, proportionate to the amount of cotton planted in each zone, on the board of directors of a cotton growers' organization. Adds conditions to liens taken by the State Plant Board for collection of boll weevil eradication assessments. *See* A.C.A. §§ 2-16-612(g), -617(c). Effective date: 4/22/2003.

Act 1763 – Requires the Oil and Gas Commission to enforce the provisions regarding escrow accounts for mineral proceeds and requires a report of each account to be filed with the Commission. *See* A.C.A. § 18-28-402. Effective date: 7/15/2003.

Act 1774 – Expands marine sanitation laws to conform to federal standards. Increases watercraft fees and reallocates funds from watercraft fees to fund the Marine Sanitation Fund. Defines “marine sanitation device” and “sewage pumpout facility” and provides regulations for their use. Makes it the duty of the ADH to enforce marine sanitation laws in state waters. *See* A.C.A. §§ 19-6-487, 27-101-103, -111(a), -411 to -414. Effective date: 4/22/2003.

Act 46 of 1st Extraordinary Session - Along with other appropriations, moved \$10,000,000 from the Landfill Post-Closure Trust Fund to the General Improvement Fund. This transfer has this effect of extending the fees imposed per the Trust Fund Act approximately five additional years. *See* A.C.A. § 8-6-1001 *et seq.* Effective date: 5/9/03.

Authored by:

Kelly M. McQueen

Ms. McQueen focuses her law practice on the areas of environmental and natural resources law.
She is the 2003-2004 Chair of the Arkansas Bar Association Environmental Law Section.
