

## [A.C.A. § 8-6-204](#)

Current through all legislation of the 2020 First Extraordinary Session and the 2020 Fiscal Session (through all legislation enacted and approved in 2020)

***AR - Arkansas Code Annotated > Title 8 Environmental Law > Chapter 6 Disposal of Solid Wastes and Other Refuse > Subchapter 2 — Arkansas Solid Waste Management Act***

### **8-6-204. Criminal, civil, and administrative penalties.**

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#### **(a) Criminal Penalties.**

##### **(1)**

**(A)** Any person who violates any provision of this subchapter, who commits any unlawful act under this subchapter, or who violates any rule or order of the Arkansas Pollution Control and Ecology Commission or the Division of Environmental Quality shall be guilty of a misdemeanor.

**(B)** Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than one (1) year or a fine of not more than twenty-five thousand dollars (\$25,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

##### **(2)**

**(A)** It shall be illegal for a person to:

**(i)** Violate any provision of this subchapter, commit any unlawful act under this subchapter, or violate any rule or order of the commission or division, and leave the state or remove his or her person from the jurisdiction of this state;

**(ii)** Through the course of activities prohibited by this section, purposely, knowingly, or recklessly cause pollution of the waters or air of the state in a manner not otherwise permitted by law and thereby create a substantial likelihood of adversely affecting human health, animal or plant life, or property; or

**(iii)** Purposely or knowingly make any false statement, representation, or certification in any document required to be maintained under this chapter, or falsify, tamper with, or render inaccurate any monitoring device, testing method, or record required to be maintained under this chapter.

##### **(B)**

**(i)** A person who violates this subdivision (a)(2) shall be guilty of a felony.

**(ii)** Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than five (5) years or a fine of not more than fifty thousand dollars (\$50,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

**(3)** Notwithstanding the limits on fines set in subdivisions (a)(1) and (2) of this section, if a person convicted under subdivision (a)(1) or subdivision (a)(2) of this section has derived or will derive

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pecuniary gain from commission of the offenses, then he or she may be sentenced to pay a fine not to exceed two (2) times the amount of the pecuniary gain.

**(b) Civil Penalties.** The division is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

- (1)** Restrain any violation of or compel compliance with the provisions of this subchapter and of any rules, orders, permits, licenses, or plans issued pursuant to this subchapter;
- (2)** Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter;
- (3)** Recover all costs, expenses, and damages to the division and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including natural resource damages;
- (4)** Assess civil penalties in an amount not to exceed ten thousand dollars (\$10,000) per day for violations of this subchapter and of any rules, permits, or plans issued pursuant to this subchapter; or
- (5)** Recover civil penalties assessed pursuant to subsection (c) of this section.

**(c)** Any person who violates any provision of this subchapter and rules, permits, or plans issued pursuant to this subchapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation. Each day of a continuing violation may be deemed a separate violation for purposes of civil penalty assessment. No civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing in accordance with rules adopted by the commission. All hearings and appeals arising under this subchapter shall be conducted in accordance with the procedures prescribed by §§ 8-4-205, 8-4-212, and 8-4-218 — 8-4-229. These administrative procedures may also be used to recover all costs, expenses, and damages to the division and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including natural resource damages.

**(d)** As an alternative to the limits on civil penalties set in subsections (b) and (c) of this section, if a person found liable in actions brought under subsection (b) or subsection (c) of this section has derived pecuniary gain from commission of the offenses, then he or she may be ordered to pay a civil penalty equal to the amount of the pecuniary gain.

**(e)**

**(1)** All moneys collected as reimbursement for expenses, costs, and damages to the division shall be deposited into the operating fund of the division.

**(2)** All moneys collected as civil penalties pursuant to this section shall be deposited into the Hazardous Substance Remedial Action Trust Fund as provided by § 8-7-509.

**(3)**

**(A)** The Director of the Division of Environmental Quality, in his or her discretion, may authorize in-kind services or cash contributions as partial mitigation of cash penalties for use in projects or programs designed to advance environmental interests.

**(B)** The violator may provide in-kind services or cash contributions as directed by the division by utilizing the violator's own expertise, by hiring and compensating subcontractors to perform the in-kind services, by arranging and providing financing for the in-kind services, or by other financial arrangements initiated by the division in which the violator and the division retain no monetary benefit, however remote.

**(C)** The in-kind services shall not duplicate or augment services already provided by the division through appropriations of the General Assembly.

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- (4) All moneys collected to cover the costs, expenses, or damages of other agencies or subdivisions of the state, including natural resource damages, shall be distributed to the appropriate governmental entity.
- (f) The culpable mental states referenced throughout this section shall have the definitions set out in § 5-2-202.
- (g) Solicitation or conspiracy, as defined by the Arkansas Criminal Code at § 5-3-301 et seq. and § 5-3-401 et seq., to commit any criminal act proscribed by this section and §§ 8-4-103 and 8-7-204 shall be punishable as follows:
- (1) Any solicitation or conspiracy to commit an offense under this section which is a misdemeanor shall be a misdemeanor subject to fines not to exceed fifteen thousand dollars (\$15,000) per day of violation or imprisonment for more than six (6) months, or both such fine and imprisonment;
  - (2) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of fifty thousand dollars (\$50,000) per day or imprisonment up to five (5) years shall be a felony subject to fines up to thirty-five thousand dollars (\$35,000) per day or imprisonment up to two (2) years, or both such fine and imprisonment;
  - (3) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of one hundred thousand dollars (\$100,000) per day or imprisonment up to ten (10) years shall be a felony subject to fines up to seventy-five thousand dollars (\$75,000) per day or imprisonment up to seven (7) years, or both such fine and imprisonment; and
  - (4) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of two hundred fifty thousand dollars (\$250,000) per day or imprisonment up to twenty (20) years shall be a felony subject to fines up to one hundred fifty thousand dollars (\$150,000) per day or imprisonment up to fifteen (15) years, or both such fine and imprisonment.
- (h) In cases considering suspension of sentence or probation, efforts or commitments by the defendant to remediate any adverse environmental effects caused by his or her activities may be considered by the court to be restitution as contemplated by § 5-4-301.
- (i) A business organization and its agents or officers may be found liable under this section in accordance with the standards set forth in § 5-2-501 et seq. and sentenced to pay fines in accordance with the provisions of § 5-4-201(d) and (e).

## History

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Acts 1971, No. 237, § 11; 1983, No. 666, § 3; A.S.A. 1947, § 82-2711; Acts 1987, No. 529, § 2; 1991, No. 1057, §§ 4, 5; 1993, No. 731, § 4; 1995, No. 547, § 2; 1995, No. 895, § 5; 1999, No. 582, § 1; 2005, No. 1824, § 6; 2019, No. 315, §§ 522-526; [2019, No. 910, §§ 2591-2597](#).

Annotations

## Notes

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### A.C.R.C. Notes.

Pursuant to § 1-2-207, subdivision (e)(3) of this section is set out above as amended by Acts 1995, No. 895, § 5. This subdivision was also amended by Acts 1995, No. 547, § 2, to read as follows:

“(e)

**(3)**

**(A)** The director, in his discretion, may accept in-kind services as partial mitigation of cash penalties for use in projects or programs designed to advance environmental interests.

**(B)** The violator may provide in-kind services as directed by the department by utilizing the violator's own expertise, by hiring and compensating subcontractors to perform the services, or by other financial arrangements in which the violator retains no monetary benefit, however remote.

**(C)** The services shall not duplicate or augment services already provided by the department through appropriations of the General Assembly.”

**Publisher's Notes.**

Acts 1991, No. 1057, § 1, provided: “The General Assembly finds and determines that the criminal and civil penalties imposed by current law do not accurately reflect the degree of concern which the state places upon its environmental resources. The current criminal penalties for hazardous waste and other violations are among the lowest in the nation. Civil penalties for violations of the state water, air, solid waste and hazardous waste pollution control statutes are set at the minimum necessary to receive federally delegated programs. In declaring itself “The Natural State,” the State of Arkansas demonstrated its commitment to its environmental resources. This commitment must be reflected in its environmental enforcement program. This act shall be liberally construed so as to achieve remedial intent.”

Acts 1991, No. 1057, § 5, is also codified as §§ 8-4-103(h)-(k) and 8-7-204 (f)-(i).

Acts 1993, No. 731, § 1, provided: “The State of Arkansas has an abundance of environmental concerns which need research and study, as well as concerns which have an immediate remedy but are absent funds to facilitate their implementation. This amendment serves to clarify the existing use of inkind services as penalties, to include cash contributions for use in worthy environmental projects and to advance environmental interests.”

**Amendments.**

The 2019 amendment by No. 315 deleted “regulation” following “rule” in (a)(1)(A) and (a)(2)(A)(i); deleted “regulations” following “rules” in (b)(1) and (b)(4); and in (c), deleted “regulations” preceding “rules” in the first sentence, and substituted “rules” for “regulations” in the third sentence.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(1)(A) and (e)(3)(A); and substituted “division” for “department” throughout the section.

**Case Notes**

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Liability.  
Statute of Limitations.

**Liability.**

Anyone who disposes of, transports, processes or abandons waste in a manner or place likely to cause water or air pollution, is liable to the state for costs, expenses and damages, including natural resource damages. [Arkansas ex rel. Bryant v. Dow Chem. Co., 981 F. Supp. 1170 \(E.D. Ark. 1997\)](#).

**Statute of Limitations.**

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Court denied summary judgment to the oil company, which was one of the defendants in an action by the landowners for damages from defendants' dumping, as the Arkansas Solid Waste Management Act (ASWMA), § 8-6-201 et seq., contained no limitations period; the court believed that it was doubtful that the Arkansas Legislature intended that a limitations period specifically limited to actions founded on contract or liability, as set forth in § 16-56-105(3), should operate to reach out and limit the reach of the ASWMA. [Sewell v. Phillips Petro. Co., 197 F. Supp. 2d 1160 \(W.D. Ark. 2002\)](#).

## Research References & Practice Aids

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### Cross References.

Arkansas Criminal Code, § 5-1-101 et seq.

Penalties and procedures, § 8-6-902.

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