

Act 441 of the 1989 Regular Session.

Act 441

SB449

By: Senator Ingram

"AN ACT TO AMEND THE REMEDIAL ACTION TRUST FUND ACT A.C.A. SECTION 8-7-501, ET SEQ., (HEREINAFTER THE 'ACT') TO CLARIFY THAT PERSONS WHO UNDERTAKE REMEDIAL ACTION AT A HAZARDOUS SUBSTANCE SITE MAY OBTAIN CONTRIBUTION FROM ANY OTHER PERSON WHO IS LIABLE FOR THE HAZARDOUS SUBSTANCE SITE; TO PROVIDE FOR SITE ACCESS TO UNDERTAKE REMEDIAL ACTION; AND FOR OTHER PURPOSES."

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

SECTION 1. A.C.A. Section 8-7-502 is hereby amended to read as follows:  
"8-7-502. Legislative Intent.

It is the intent of the General Assembly to provide the state with the necessary authority and funds to investigate, control, prevent, abate, treat, or contain releases of hazardous substances necessary to protect the public health and the environment, including funds required to assure payment of the state's participation in response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to encourage the reduction of hazardous waste generation.

The purpose of this act is to encourage privately funded remedial action, and to clarify that persons who have undertaken remedial action at a hazardous substance site in response to an action initiated by the department pursuant to 8-7-508, may obtain contribution from any other person who is liable for remediation of the hazardous substance site.

A further purpose of this act is to clarify the General Assembly's intent to provide the department with the necessary funds for remedial action at a hazardous substance site, recognizing that both public and private funds must be expended to implement remedial action at the hazardous substance sites which exist in this state. Costs and expenses for remedial action, whether expended by the department or by any person liable for the hazardous substance site are legal damages to persons liable to the state, and to persons liable to any other person for contribution, whether such liability arises by voluntary compliance with the act, pursuant to an order from or settlement with the department, or by suit for injunctive relief, declaratory judgment, contribution, damages or restitution, whether such suit is brought by the state or by any party authorized to bring a suit for relief under the act."

SECTION 2. A.C.A. Section 8-7-512 (b) (2) (A) is hereby amended to read as follows:

"(2) (A) This subsection shall not preclude liability for damages as a result of gross negligence or intentional misconduct on the part of the person, nor shall this subsection preclude liability for damages and costs of remedial action of any person liable for such damages and costs pursuant to subsection (a) of this section."

SECTION 3. Subchapter 5 of Chapter 7 of Title 8 of the Arkansas Code is hereby amended by adding three new sections to read as follows:

"8-7-520. Contribution.

(a) Any person who has undertaken or is undertaking remedial action at a

hazardous substance site in response to an administrative or judicial order initiated against such person pursuant to 8-7-508 may obtain contribution from any other person who is liable for such hazardous substance site.

(b) Any person who has resolved all or a portion of his liability for a hazardous substance site by undertaking remedial action pursuant to an administrative or judicially approved settlement may obtain contribution from any person who is liable for such hazardous substance site and is not a party to the settlement.

(c) Those persons identified under 8-7-512 (a) shall be the persons liable for the hazardous substance site.

(d) An action for contribution may be brought in the chancery court of the county in which the hazardous substance site is located. In resolving contribution claims, the court shall allocate the costs and expenses incurred or to be incurred by the contribution claimant(s) for undertaking remedial action among all persons liable for the hazardous substance site, using such equitable factors as the court determines are appropriate.

(e) Any person who has resolved all or a portion of his liability for a hazardous substance site by undertaking remedial action pursuant to an administrative or judicial proceeding or settlement shall not be liable for claims for contribution regarding matters addressed in the order or settlement which have been satisfactorily resolved. Such order or settlement does not discharge any of the other persons liable for the hazardous substance site who did not undertake or participate in the remedial action unless the terms of the order or settlement so provide.

(f) This section shall apply to any claim for contribution initiated after the date of this act.

(g) No action for contribution may be commenced more than three (3) years after the date of the administrative or judicial order or settlement with respect to such remedial action. In any such action the court shall enter a declaratory judgment on liability that will be binding on any subsequent action to recover costs and expenses for remedial action.

(h) In any action for contribution, judicial review of any issues concerning the adequacy of the remedial action shall be limited to the administrative record, to determine whether the selected remedy contained in the order or settlement is arbitrary or capricious; and then only such costs and expenses as are found to be inconsistent with those terms of the administrative or judicial order or settlement found to be arbitrary or capricious may be disallowed.

#### 8-7-521. Site access for remedial action.

(a) For purposes of responding to an administrative or judicial order or settlement entered pursuant to 8-7-508, the owner and/or the operator of a facility which is a hazardous substance site or any person who otherwise controls access to such facility, shall provide access to the department, any employee of the department, or any other person, duly designated by the director, who undertakes such activities as are required to carry out the terms of the said order or settlement.

(b) Any person who impedes or interferes with a person who is entitled to site access for the purpose of conducting remedial action at a hazardous substance site pursuant to the terms of an administrative or judicial order or settlement may be assessed a civil penalty by the department, in an administrative proceeding, or by the court, in a judicial proceeding for a site access injunction, of up to ten thousand dollars (\$10,000) per day that site access is impeded.

(c) Any person who knowingly impedes or interferes with a person who is entitled to site access for the purpose of conducting remedial action at a hazardous substance site pursuant to the terms of an administrative or

judicial order or settlement shall be guilty of a misdemeanor, punishable by a fine of up to one thousand dollars (\$1,000) or imprisonment for up to one year, or both.

8-7-522. Liability.

No shareholder, director or officer of a corporation or a grantor or trustee of a trust whose sole purpose, as stated in its articles of incorporation or its trust agreement, is to conduct remedial action at a hazardous substance site pursuant to an administrative or judicial order or settlement under A.C.A. Section 8-7-508, shall be liable to any person for any action of the corporation or trust reasonably related to the stated purpose of the corporation or trust. This section shall not apply to any action of the corporation or trust resulting from the gross negligence or intentional misconduct of a shareholder, director or officer of said corporation, or a grantor or trustee of said trust. Nothing herein shall be construed to alter the liability of any person for the hazardous substance site under this act, nor shall the liability of any such person be expanded as a result of such person undertaking remedial action or serving as a shareholder, officer or director of a corporation or as a grantor or trustee of a trust which undertakes remedial action pursuant to an administrative or judicial order or settlement under A.C.A. Section 8-7-508."

SECTION 4. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 5. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 6. EMERGENCY. It is hereby found and determined by the General Assembly that there are numerous hazardous substance sites in this state which pose a threat to the public health, welfare and safety of the citizens of this state and to the environment. In order to promptly address these sites it is imperative that this act be adopted to encourage maximum participation from the private sector. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: March 9, 1989

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