

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Senators Hopkins and Everett**

# A Bill

**ACT 951 OF 1993**  
**SENATE BILL 158**

## For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED TITLE 8, CHAPTER  
9 7, *SUBCHAPTER 9*, TO ALLOW *THE* DEPARTMENT DIRECTOR TO  
10 AUTHORIZE PAYMENTS FROM THE *PETROLEUM STORAGE TANK* TRUST  
11 FUND; TO GIVE THE ATTORNEY GENERAL AUTHORITY TO INTERVENE  
12 IN THIRD PARTY SUITS INVOLVING THE TRUST FUND; TO PROTECT  
13 TRADE SECRETS; AND FOR OTHER PURPOSES."

## Subtitle

16 "TO AMEND THE PETROLEUM STORAGE TANK TRUST FUND ACT."

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

20 SECTION 1. Arkansas Code Annotated §8-7-902 is amended to read as  
21 follows:

22 "8-7-902. Definitions.

23 As used in this subchapter, unless the context otherwise requires:

24 (1) Aboveground storage tank means any one or a combination of  
25 containers, vessels, and enclosures located above ground, including structures  
26 and appurtenances connected to them, whose capacity is greater than one  
27 thousand three hundred twenty gallons (1,320 gals.) and not more than thirty  
28 thousand gallons (30,000 gals.) and that is used to contain or dispense motor  
29 fuels, distillate special fuels, or other refined petroleum products. Such  
30 term does not include mobile storage tanks used to transport petroleum from  
31 one location to another or those used in the production of petroleum or  
32 natural gas;

33 (2) Accidental release means any sudden or nonsudden release of  
34 petroleum from a storage tank that results in a need for corrective action or  
35 compensation for bodily injury or property damage, or both, neither expected  
36 nor intended by the tank owner or operator;

1           (3) \_Advisory committee\_ or \_committee\_ means the Advisory Committee on  
2 Petroleum Storage Tanks as established in this subchapter;

3           (4) \_Commission\_ means the Arkansas Pollution Control and Ecology  
4 Commission;

5           (5) \_Corrective action\_ means those actions which may be necessary to  
6 protect human health and the environment as a result of an accidental release,  
7 sudden or nonsudden;

8           (6) \_Department\_ means the Arkansas Department of Pollution Control and  
9 Ecology;

10          (7) \_Director\_ means the Director of the Arkansas Department of  
11 Pollution Control and Ecology;

12          (8) \_Distributor\_ means and includes any person, including the State of  
13 Arkansas and any political subdivision thereof, but not including the United  
14 States of America or any of its instrumentalities except to the extent  
15 permitted by the Constitution or laws thereof, who is customarily in the  
16 wholesale business offering for resale or delivery of motor fuels to dealers,  
17 consumers, or others in tanks of two hundred gallons (200 gals.) or more which  
18 are not connected to a motor vehicle; and is:

19           (A) Making the first sale in the State of Arkansas of any motor fuel,  
20 imported into the state from any other state, territory, or foreign country,  
21 after it shall have been received within this state within the meaning of §  
22 26-55-201 et seq.; or

23           (B) Consuming or using in the State of Arkansas any motor fuel so  
24 imported and shall have purchased it before it shall have been received by any  
25 other person in this state, within the meaning of § 26-55-201 et seq.; or

26           (C) Producing, refining, preparing, distilling, manufacturing,  
27 blending, or compounding motor fuel in this state;

28          (9) \_Fund\_ means the Petroleum Storage Tank Trust Fund created by this  
29 subchapter;

30          (10) \_Occurrence\_ means an accident, including continuous or repeated  
31 exposure to conditions, which results in a release from a storage tank;

32          (11) \_Owner or operator\_, when the owner or operator are separate  
33 parties, means the person who is required to obtain financial assurances under  
34 the state or federal underground storage tank program;

35          (12) \_Person\_ means any individual; corporation; company; firm;

1 partnership; association; trust; joint-stock company or trust; venture;  
2 municipal; state; or federal government or agency; or any other legal entity,  
3 however organized;

4 (13) Petroleum means petroleum, including crude oil or any fraction  
5 thereof, which is liquid at standard conditions of temperature and pressure  
6 [sixty degrees Fahrenheit (60° F) and fourteen and seven-tenths pounds (14.7  
7 lbs.) per square inch absolute];

8 (14) Storage tank means an aboveground storage tank or underground  
9 storage tank as defined in this subchapter;

10 (15) Release means any spilling, leaking, emitting, discharging,  
11 escaping, leaching, or disposing from a storage tank into ground water,  
12 surface water, or subsurface soils. This term does not include releases that  
13 are permitted or authorized by the department or by federal law;

14 (16) Supplier means any person who is customarily in the wholesale  
15 business of offering distillate special fuels or liquefied gas special fuels  
16 for resale or use to any person in this state and who makes bulk sales of  
17 fuel. The term supplier shall include pipeline importers, first receivers,  
18 and second receivers;

19 (17) Terminal means a bulk storage facility for storing petroleum  
20 products supplied by pipeline or marine vessels;

21 (18) (A) Underground storage tank means any one (1) or combination of  
22 tanks, including underground pipes connected thereto, which is or has been  
23 used to contain petroleum, and the volume of which, including the volume of  
24 the underground pipes connected thereto, is ten percent (10%) or more beneath  
25 the surface of the ground.

26 (B) The term underground storage tank does not include any:

27 (i) Farm or residential tank of one thousand one hundred gallons (1,100  
28 gals.) or less capacity used for storing motor fuel for noncommercial  
29 purposes;

30 (ii) Tank used for storing heating oil for consumptive use on the  
31 premises where stored;

32 (iii) Septic tank;

33 (iv) Intrastate and interstate pipeline facilities regulated by the  
34 Public Service Commission or other applicable state or federal agency and all  
35 other pipeline facilities, including gathering lines regulated under:

1 (a) The Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. 1671,  
2 et seq., 49 USCS Appx. 1671 et seq.;

3 (b) The Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App.  
4 2001, et seq.;

5 (v) Surface impoundment, pit, pond, or lagoon;

6 (vi) Storm water or wastewater collection system;

7 (vii) Flow-through process tank;

8 (viii) Liquid trap or associated gather lines directly related to oil  
9 or gas production and gathering operations; or

10 (ix) Storage tank situated in an underground area, such as a basement,  
11 cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated  
12 upon or above the surface of the floor.

13 (x) Any pipes connected to any tank which is described in subparagraphs  
14 (i) through (ix) of this subdivision.

15 (19) Substantial compliance means there is a reasonable assurance  
16 that the owner or operator is in compliance with all state and federal laws  
17 and regulations relating to storage tanks, including those relating to  
18 financial responsibility."  
19

20 SECTION 2. Arkansas Code Annotated §8-7-903 is amended to read as  
21 follows:

22 "8-7-903. Rules and regulations - Powers of department.

23 (a) The Director of the Department of Finance and Administration is  
24 authorized to adopt appropriate rules and regulations not inconsistent with  
25 this subchapter as he may deem necessary to carry out the intent and purposes  
26 of and to assure compliance with this subchapter.

27 (b) The commission is authorized to adopt appropriate rules and  
28 regulations not inconsistent with this subchapter to carry out the intent and  
29 purposes of and to assure compliance with this subchapter.

30 (c) The department shall have the authority to enter upon the property  
31 of any owner or operator of an aboveground storage tank to obtain information,  
32 conduct surveys, or review records for the purpose of determining substantial  
33 compliance, as defined by this subchapter and regulations promulgated  
34 thereunder, with all state and federal laws and regulations relating to  
35 aboveground storage tanks prior to commission approval of a claim for

1 reimbursement or disbursement."

2

3 SECTION 3. Arkansas Code Annotated §8-7-904 is amended to read as  
4 follows:

5 "8-7-904. Advisory committee.

6 (a) (1) There is established an advisory committee on petroleum storage  
7 tanks to be composed of the following members:

8 (A) A representative from the property and casualty segment of the  
9 insurance industry;

10 (B) A representative from a company that is a refiner and also has  
11 service stations or other motor fuel retail outlets in the state;

12 (C) A representative from a company that is a jobber or wholesaler of  
13 petroleum products in the state;

14 (D) An independent retail service station dealer;

15 (E) The State Fire Marshal or his designee;

16 (F) A representative from a company that installs or repairs petroleum  
17 storage tanks; and

18 (G) A representative from a company that has one or more employees with  
19 knowledge and expertise regarding environmental protection and management  
20 matters.

21 (2) The Governor shall appoint the members of the advisory committee.  
22 The member appointed under subdivision (a) (1) (B) of this section shall be from  
23 a list of three (3) names submitted by the Arkansas Petroleum Council. The  
24 member appointed under subdivision (a) (1) (C) of this section shall be from a  
25 list of three (3) names submitted by the Arkansas Oil Marketers Association.  
26 The member appointed under subdivision (a) (1) (D) of this section shall be from  
27 a list of three (3) names submitted by the Service Station Dealers of  
28 Arkansas. The member appointed under subdivision (a) (1) (G) of this section  
29 shall be from a list of three (3) names submitted by the Arkansas  
30 Environmental Federation.

31 (3) Each member of the committee shall serve a four-year term and until a  
32 successor has been appointed.

33 (4) Any vacancies shall be filled by the Governor to serve the remainder  
34 of the term.

35 (b) Committee members shall serve without compensation but shall be

1 entitled to per diem and mileage allowances for attendance at committee  
2 meetings at the same rate authorized by law for legislators' attendance at  
3 meetings of joint interim committees of the General Assembly. Committee  
4 members shall be entitled to reimbursement for actual expenses incurred for  
5 lodging while attending committee meetings which involve overnight stays.

6 (c) The committee shall select a member to serve as chairman each year.

7 (d) The committee shall meet as necessary to carry out its duties under  
8 this subchapter and at the call of the chair.

9 (e) The department shall provide adequate staff to support the activities  
10 of the committee.

11 (f) The committee shall adopt all rules and regulations necessary to  
12 conduct its business.

13 (g) The committee shall advise and make recommendations to the director  
14 regarding claims for payment under this subchapter.

15 (h) The committee shall advise the department and the commission  
16 regarding promulgation of rules and regulations concerning storage tanks.

17 (i) No member of the committee shall participate in any decision on any  
18 claim in which the firm or organization by which that member is employed, or  
19 in which that member has a direct or indirect financial interest, is  
20 involved."

21

22 SECTION 4. Arkansas Code Annotated §8-7-905 is amended to read as  
23 follows:

24 "8-7-905. Petroleum Storage Tank Trust Fund.

25 (a) There is established on the books of the State Treasurer, State  
26 Auditor, and Chief Fiscal Officer of the State a fund to be known as the  
27 Petroleum Storage Tank Trust Fund, hereinafter referred to as the fund.

28 (b) The fund will be administered by the director who shall make  
29 disbursements from the fund as authorized by this subchapter.

30 (c) The fund shall consist of gifts, grants, donations, and such other  
31 funds as may be made available by the General Assembly, including all interest  
32 earned upon money deposited in the fund, all fees assessed under this  
33 subchapter, any moneys recovered by the department, and any other moneys  
34 legally designated for the fund.

35 (d) Moneys in the fund may be expended by the director solely for the

1 following purposes, as limited by the provisions of subsection (e) of this  
2 section:

3 (1) The state share mandated by the federal Resource Conservation and  
4 Recovery Act of 1976, as amended;

5 (2) To pay costs incurred by the commission or the advisory committee  
6 in the performance of their duties under this subchapter;

7 (3) To pay reimbursement for taking corrective action or to compensate  
8 owners or operators for claims by third parties for bodily injury and property  
9 damage, or both, caused by accidental releases from qualified storage tanks;

10 (4) To pay reasonable and necessary costs and expenses of the  
11 department for taking corrective action, caused by accidental releases from a  
12 storage tank of unknown ownership or when corrective action is not commenced  
13 by the owner or operator in a timely manner;

14 (5) To reimburse owners and operators in the vicinity of the release  
15 for performing short-term testing or monitoring which is in addition to that  
16 required by the department's rules and regulations if the department has a  
17 reasonable basis for believing that such petroleum underground storage tank or  
18 tanks may be the source of the release. The owners and operators of petroleum  
19 underground storage tanks, including out-of-service and nonoperational tanks,  
20 not found to be the source of the release and who cooperated with the  
21 department may apply to the fund for reimbursement, for such testing and  
22 monitoring costs, not including lost managerial time or loss of revenues  
23 because of temporary business closure.

24 (e) Notwithstanding any other provisions of this subchapter, the  
25 director, upon finding that a release may present an imminent and substantial  
26 hazard to the health of persons or to the environment and that an emergency  
27 exists requiring immediate action to protect the public health and welfare or  
28 the environment, may, without receiving prior advice from the advisory  
29 committee, issue an order reciting the existence of such an imminent hazard  
30 and emergency and ordering a disbursement or reimbursement of up to fifty  
31 thousand dollars (\$50,000) from the fund so that such action may be taken as  
32 he determines to be necessary to protect the health of such persons or the  
33 environment and to meet the emergency.

34 (f) (1) No expenditure from the fund shall be made for expenses for  
35 retrofitting or replacement of petroleum storage tanks.

1           (2) No expenditure from the fund pursuant to subdivisions (d)(3) and  
2 (d)(5) of this section shall be made for attorneys\_ fees.

3           (g) The liability or obligation of the fund is not the liability or  
4 obligation of the State of Arkansas provided, however, that this subsection  
5 shall not be construed as relieving the fund of any liability or obligation  
6 prescribed in this subchapter upon the entry of a valid court order or valid  
7 final order of the Arkansas State Claims Commission establishing a judgment  
8 against any state agency, board, department, or commission or where a  
9 settlement agreement has been reached arising from third-party claims against  
10 any state agency, board, department, or commission where such state agency,  
11 board, department, or commission is determined to be the owner or operator.

12           (h) Nothing in this subchapter shall be construed to abrogate or waive  
13 the provisions of Article 5, § 20, Arkansas Constitution."  
14

15           SECTION 5. Arkansas Code Annotated §8-7-906 is amended to read as  
16 follows:

17           "8-7-906. Petroleum environmental assurance fee.

18           (a) There is established a petroleum environmental assurance fee to be  
19 paid, except as provided in subsection (c) of this section, on each gallon of  
20 motor fuel or distillate special fuel purchased or imported into this state.

21           (b) The fee shall be paid by the first distributor or supplier  
22 receiving fuel from a terminal in this state, or, if the fuel will never be  
23 stored in a terminal in this state, then by the distributor or supplier who  
24 first imports fuel into this state by tank truck.

25           (c) Exchanges of fuels on a gallon-for-gallon basis within a terminal  
26 or fuels exported from this state are exempt from the fee.

27           (d) Proof of payment shall be provided to the owner or operator.

28           (e) The fee shall be remitted to the Director of the Department of  
29 Finance and Administration at the time, in the manner, and on forms prescribed  
30 by the director and may be collected and remitted at the same time and in the  
31 same manner as the motor fuel tax and special motor fuels tax under §§  
32 26-55-101 et seq. and 26-56-101 et seq.

33           (f) All fees collected under this subchapter shall be deposited in the  
34 Petroleum Storage Tank Trust Fund. The applicable fund balances shall be  
35 required to be maintained in perpetuity.



1           (g) *The maximum rate for the environmental assurance fee shall be at a*  
2 *rate of two-tenths (2/10ths) of one cent (1¢) for each gallon of fuel. The*  
3 *fees shall be collected at the maximum rate provided, however, that when the*  
4 *balance of the fund reaches fifteen million dollars (\$15,000,000), the rate*  
5 *shall drop at the beginning of the next calendar quarter to such rate as the*  
6 *commission determines is necessary to maintain a fifteen million dollar*  
7 *(\$15,000,000) balance. The rate shall be increased at the beginning of the*  
8 *next calendar quarter when the fund balance drops to twelve million dollars*  
9 *(\$12,000,000) or less and remain at the higher amount not to exceed two tenths*  
10 *(2/10ths) of one cent (\$.01) until the fund balance reaches fifteen million*  
11 *dollars (\$15,000,000). The commission shall review the fund balance at least*  
12 *quarterly and report the rate of collection for the environmental assurance*  
13 *fee for the upcoming quarter to the Director of the Department of Finance and*  
14 *Administration.*

15           (h) All fees shall be subject to collection and enforcement of  
16 collection under the Arkansas Tax Procedure Act, §26-18-101 et seq."  
17

18           SECTION 6. Arkansas Code Annotated §8-7-907 is amended to read as  
19 follows:

20           "8-7-907. Payments for corrective action.

21           (a) No payment for corrective action shall be paid from the fund until  
22 the owner or operator has expended *twenty-five thousand dollars (\$25,000)* on  
23 corrective action for the occurrence except in cases where the director is  
24 using his emergency authority under §8-7-905(e). It is the intent of the  
25 General Assembly that this initial level of expenditure be considered the  
26 equivalent of an insurance policy deductible. Owners or operators of  
27 underground storage tanks must demonstrate financial responsibility for the  
28 *twenty-five thousand dollars (\$25,000)* deductible for corrective actions.

29           (b) Payment for corrective action shall not exceed one million dollars  
30 (\$1,000,000) per occurrence.

31           (c) All payments for corrective action expenses of the owner or  
32 operator shall be made only following proof that:

- 33           (1) Corrective action has adequately addressed the release and the  
34 release is no longer a threat to public health and safety or the environment;  
35           (2) At the time of discovery of the release, the owner or operator had

1 paid all fees required under state law or regulations applicable to petroleum  
2 storage tanks;

3       (3) At the time of the occurrence, the owner or operator was in  
4 substantial compliance as defined by this subchapter and regulations  
5 promulgated thereunder and with all state and federal laws and regulations  
6 relating to storage tanks, including those relating to financial  
7 responsibility; and

8       (4) The department was given timely notice of the release and the owner  
9 or operator cooperated fully with the department in corrective action to  
10 address the release.

11       (d) The commission may provide through rule and regulation for interim  
12 payments for corrective action. Interim payments shall be subject to these  
13 limitations:

14       (1) Proof of compliance with the requirements of subdivisions  
15 (c)(2)-(4) of this section must be provided.

16       (2) Specific assurances must be provided that an approved corrective  
17 action plan, department directive or order is being implemented and followed  
18 to date.

19       (3) Interim payments shall consist of payment of an amount not to  
20 exceed ninety percent (90%) of reimbursable expenditures to date. The  
21 remaining ten percent (10%) shall be released only upon final payment for  
22 corrective action concerning the occurrence.

23       (e) In the event moneys are expended from the fund for corrective  
24 action and the owner or operator was not at the time of the occurrence in  
25 substantial compliance as defined by this subchapter and regulations  
26 promulgated hereunder, the department may recover from the owner or operator  
27 the amount of moneys expended from the fund for the corrective action by  
28 filing an action in the appropriate circuit court or by using the  
29 administrative procedures set forth in §8-7-804."

30

31       SECTION 7. Arkansas Code Annotated §8-7-908 is amended to read as  
32 follows:

33       "8-7-908. Third-party claims.

34       (a) No payment to any owner or operator against whom a third-party  
35 claim is brought for bodily injury or property damage, or both, shall be paid

1 from the fund until the owner or operator has expended twenty-five thousand  
2 dollars (\$25,000) on third-party claims for the occurrence except in cases  
3 where the director is using his emergency authority under § 8-7-905(e). It is  
4 the intent of the General Assembly that this initial level of expenditure be  
5 considered the equivalent of an insurance policy deductible. Owners and  
6 operators of underground storage tanks must demonstrate financial  
7 responsibility for the twenty-five thousand dollar (\$25,000) deductible for  
8 third-party liability costs.

9 (b) Payment for third-party claims shall not exceed one million dollars  
10 (\$1,000,000) per occurrence.

11 (c) All payments for third-party claims shall be made only following  
12 proof that:

13 (1) At the time of the occurrence, the owner or operator was in  
14 substantial compliance with the financial responsibility requirements;

15 (2) At the time of discovery of the release, the owner or operator had  
16 paid all fees required under state law or regulations applicable to petroleum  
17 storage tanks; and

18 (3) A valid final court order or valid final order of the Arkansas  
19 State Claims Commission establishing a judgment against the owner or operator  
20 for bodily injury or property damage caused by an accidental release from a  
21 qualified storage tank has been entered.

22 (d) Any owner or operator against whom a third-party claim is filed in  
23 court or in the State Claims Commission shall give written notice of the claim  
24 to the Department no later than sixty (60) days after service of summons or  
25 receipt of notification of the claim from the State Claims Commission. Upon  
26 receipt of such notice, the Department shall immediately notify the Attorney  
27 General, who shall have the right to intervene in any such lawsuit in order to  
28 protect the interests of the State in the fund. Payment of third-party claims  
29 from the fund may be denied for any owner or operator who fails to give the  
30 Department notice as required herein.

31 (e) The commission may provide through rules or regulations for  
32 payments for third-party claims under settlement agreements between the  
33 parties without entry of a final court order or State Claims Commission order.  
34 Settlement payments for third-party claims shall be subject to these  
35 limitations:

1 (1) Proof of compliance with the requirement of subdivisions (c)(1) and  
2 (c)(2) of this section must be provided.

3 (2) Specific assurances, such as dismissal with prejudice of the cause  
4 of action, that payment shall release the owner or operator from all future  
5 liability to the third-party claimant for this occurrence must be provided.

6 (3) The director must determine that litigation would result in costs  
7 to the fund which would exceed the settlement amount and, therefore, it would  
8 be in the best interests of the fund to pay the settlement amount.

9 (f) In the event moneys are expended from the fund for third-party  
10 claims and the owner or operator was not at the time of the occurrence in  
11 substantial compliance as defined by this subchapter and regulations  
12 promulgated hereunder, the department may recover from the owner or operator  
13 the amount of moneys expended from the fund for the third-party claim by  
14 filing an action in the appropriate circuit court or by using the  
15 administrative procedures set forth in §8-7-804."

16

17 SECTION 8. Arkansas Code Annotated Title 8, Chapter 7, Subchapter 9 is  
18 amended by adding a new section to read as follows:

19 "8-7-909.

20 (a) Any records, reports, or information obtained by the department or  
21 its employees in the administration of this subchapter, except release data,  
22 shall be kept confidential upon a showing satisfactory to the director that  
23 the records, reports or information would constitute a trade secret under the  
24 Arkansas Trade Secrets Act, §4-75-601 et seq.

25 (b) As necessary to carry out the provisions of this subchapter,  
26 information afforded confidential treatment may be transmitted under a  
27 continuing claim of confidentiality to other officers or employees of the  
28 state or of the United States, if the owner or operator of the facility to  
29 which the information pertains is informed of the transmittal and if the  
30 information has been acquired by the department under the provisions of this  
31 subchapter.

32 (c) The provisions of this section shall not be construed to limit the  
33 department's authority to release confidential information during emergency  
34 situations.

35 (d) Any violation of this section shall be unlawful and shall

1 constitute a misdemeanor."

2

3 SECTION 9. All provisions of this act of a general and permanent nature  
4 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
5 Revision Commission shall incorporate the same in the Code.

6

7 SECTION 10. If any provision of this act or the application thereof to  
8 any person or circumstance is held invalid, such invalidity shall not affect  
9 other provisions or applications of the act which can be given effect without  
10 the invalid provision or application, and to this end the provisions of this  
11 act are declared to be severable.

12

13 SECTION 11. All laws and parts of laws in conflict with this act are  
14 hereby repealed.

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*/s/Senators Hopkins and Everett*

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APPROVED: 4/8/93

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