

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**

A Bill

SENATE BILL 158

4 **By: Senators Hopkins and Everett**
5
6

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

14
15
16 "TO AMEND THE PETROLEUM STORAGE TANK TRUST FUND ACT."
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

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

1 nor intended by the tank owner or operator;

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

4 (4) Commission means the Arkansas Pollution Control and Ecology
5 Commission;

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

9 (6) Department means the Arkansas Department of Pollution Control and
10 Ecology;

11 (7) Director means the Director of the Arkansas Department of
12 Pollution Control and Ecology;

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

20 (A) Making the first sale in the State of Arkansas of any motor fuel,
21 imported into the state from any other state, territory, or foreign country,
22 after it shall have been received within this state within the meaning of §
23 26-55-201 et seq.; or

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

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

29 (9) Fund means the Petroleum Storage Tank Trust Fund created by this
30 subchapter;

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

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

1 (12) Person means any individual; corporation; company; firm;
2 partnership; association; trust; joint-stock company or trust; venture;
3 municipal; state; or federal government or agency; or any other legal entity,
4 however organized;

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

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

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

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

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

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

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

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

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

33 (iii) Septic tank;

34 (iv) Intrastate and interstate pipeline facilities regulated by the
35 Public Service Commission or other applicable state or federal agency and all

1 other pipeline facilities, including gathering lines regulated under:

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

4 (b) The Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App.
5 2001, et seq.;

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

7 (vi) Storm water or wastewater collection system;

8 (vii) Flow-through process tank;

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

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

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

16 (19) Substantial compliance means there is a reasonable assurance
17 that the owner or operator is in compliance with all state and federal laws
18 and regulations relating to storage tanks, including those relating to
19 financial responsibility."
20

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

23 "8-7-903. Rules and regulations - Powers of department.

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

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

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

1 aboveground storage tanks prior to commission approval of a claim for
2 reimbursement or disbursement."

3

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

6 "8-7-904. Advisory committee.

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

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

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

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

15 (D) An independent retail service station dealer;

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

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

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

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

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

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

1 (b) Committee members shall serve without compensation but shall be
2 entitled to per diem and mileage allowances for attendance at committee
3 meetings at the same rate authorized by law for legislators' attendance at
4 meetings of joint interim committees of the General Assembly. Committee
5 members shall be entitled to reimbursement for actual expenses incurred for
6 lodging while attending committee meetings which involve overnight stays.

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

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

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

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

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

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

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

22

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

25 "8-7-905. Petroleum Storage Tank Trust Fund.

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

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

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

1 (d) Moneys in the fund may be expended by the director solely for the
2 following purposes, as limited by the provisions of subsection (e) of this
3 section:

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

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

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

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

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

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

35 (f) (1) No expenditure from the fund shall be made for expenses for

1 retrofitting or replacement of petroleum storage tanks.

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

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

13 (h) Nothing in this subchapter shall be construed to abrogate or waive
14 the provisions of Article 5, § 20, Arkansas Constitution."
15

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

18 "8-7-906. Petroleum environmental assurance fee.

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

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

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

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

29 (e) The fee shall be remitted to the Director of the Department of
30 Finance and Administration at the time, in the manner, and on forms prescribed
31 by the director and may be collected and remitted at the same time and in the
32 same manner as the motor fuel tax and special motor fuels tax under §§
33 26-55-101 et seq. and 26-56-101 et seq.

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

1 required to be maintained in perpetuity.

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

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

18

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

21 "8-7-907. Payments for corrective action.

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

30 (b) Payment for corrective action shall not exceed one million dollars
31 (\$1,000,000) per occurrence.

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

34 (1) Corrective action has adequately addressed the release and the
35 release is no longer a threat to public health and safety or the environment;

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

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

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

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

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

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

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

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

31

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

34 "8-7-908. Third-party claims.

35 (a) No payment to any owner or operator against whom a third-party

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

10 (b) Payment for third-party claims shall not exceed one million dollars
11 (\$1,000,000) per occurrence.

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

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

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

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

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

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

1 limitations:

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

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

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

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

17

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

20 "8-7-909.

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

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

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

1 (d) Any violation of this section shall be unlawful and shall
2 constitute a misdemeanor."

3

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

7

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

13

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

16

/s/Senators Hopkins and Everett

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