

1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

4 **By: Senators Everett & Hopkins**

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For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED TITLE 8, CHAPTER
9 7, SUBCHAPTER 8, TO PROVIDE FOR EXPANDED CIVIL ENFORCEMENT
10 POWERS FOR THE DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY
11 OVER REGULATED STORAGE TANKS; TO PROHIBIT DELIVERY OF
12 REGULATED SUBSTANCES INTO UNREGISTERED TANKS; TO ADDRESS
13 INTERFERENCE WITH CORRECTIVE ACTION BY ADJACENT PROPERTY
14 OWNERS; AND FOR OTHER PURPOSES."

15

16

Subtitle

17 "TO PROVIDE FOR EXPANDED CIVIL ENFORCEMENT POWERS FOR THE
18 DEPARTMENT OF POLLUTION CONTROL & ECOLOGY OVER REGULATED
19 STORAGE TANKS."

20

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

22

23 SECTION 1. Arkansas Code Annotated 8-7-801 is amended to read as
24 follows:

25 "8-7-801. Definitions and exceptions. As used in this subchapter,
26 unless the context otherwise requires:

27 (1) Aboveground storage tank means any one or a combination of
28 containers, vessels, and enclosures located above ground, including structure
29 and appurtenances connected to them, whose capacity is greater than one
30 thousand three hundred twenty gallons (1320 gals.) and not more than thirty
31 thousand gallons (30,000 gals.) and that is used to contain or dispense motor
32 fuels, distillate special fuels, or other refined petroleum products. Such
33 term does not include mobile storage tanks used to transport petroleum from
34 one location to another or those used in the production of petroleum or
35 natural gas;

1 (2) Adjacent property owner means any person, other than an owner or
2 operator, owning an interest in any property affected by a release.

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

5 (4) Department means the Arkansas Department of Pollution Control and
6 Ecology;

7 (5) Operator means any person in control of, or having responsibility
8 for, the daily operation of the underground storage tank;

9 (6) (A) Owner means:

10 (i) In the case of an underground storage tank in use on
11 November 8, 1984, or brought into use after that date, any person who owns an
12 underground storage tank used for the storage, use, or dispensing of regulated
13 substances; and

14 (ii) In the case of any underground storage tank in use
15 before November 8, 1984, but no longer in use on that date, any person who
16 owned such tank immediately before the discontinuation of its use;

17 (B) Owner does not include any person who, without
18 participation in the management of an underground storage tank, holds indicia
19 of ownership primarily to protect a security interest in the tank.

20 (C) Owner shall apply only to the owner of the tank and may be
21 a different person than the person holding fee simple title to the real
22 property on which the tank is located;

23

24 (7) Person means any individual; corporation; company; firm;
25 partnership; association; trust; joint-stock company or trust; venture;
26 municipal, state, or federal government or agency; or any other legal entity,
27 however organized;

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

32 (9) Regulated substance means:

33 (A) Any substance defined in section 101(14) of the Comprehensive
34 Environmental Response, Compensation, and Liability Act of 1980, but not
35 including any substance regulated as a hazardous waste under subtitle C of the

1 Resource Conservation and Recovery Act of 1976; and

2 (B) Petroleum;

3 (10) Release means any spilling, leaking, emitting, discharging,
4 escaping, leaching, or disposing from an underground storage tank into ground
5 water, surface water, or subsurface soils. Release does not include
6 releases that are permitted or authorized by the department or by federal law;

7 (11) Storage tank means an aboveground storage tank or underground
8 storage tank as defined in this subchapter; and

9 (12) Underground storage tank means any one (1) or combination of
10 tanks, including underground pipes connected thereto, which is or has been
11 used to contain an accumulation of regulated substances, and the volume of
12 which, including the volume of the underground pipes connected thereto, is ten
13 percent (10%) or more beneath the surface of the ground. Such term does not
14 include any:

15 (A) Farm or residential tank of one thousand one hundred gallons (1,100
16 gals.) or less capacity used for storing motor fuel for noncommercial
17 purposes;

18 (B) Tank used for storing heating oil for consumptive use on the
19 premises where stored;

20 (C) Septic tank;

21 (D) Pipeline facility, including gathering lines, regulated under:

22 (i) The Natural Gas Pipeline Safety Act of 1968; and

23 (ii) The Hazardous Liquid Pipeline Safety Act of 1979;

24 (E) Surface impoundment, pit, pond, or lagoon;

25 (F) Storm water or waste water collection system;

26 (G) Flow-through process tank;

27 (H) Liquid trap or associated gathering lines directly related to oil
28 or gas production and gathering operations; or

29 (I) Storage tank situated in an underground area, such as a basement,
30 cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated
31 upon or above the surface of the floor;

32 (J) The term underground storage tank shall not include any pipes
33 connected to any tank which is described in subdivisions (A) through (I) of
34 this subdivision."

35

1 SECTION 2. Arkansas Code Annotated 8-7-802 is amended to read as
2 follows:

3 "8-7-802. Department's powers and duties.

4 (a) The commission shall have the following powers and duties:

5 (1) To promulgate, after notice and public hearing, and to
6 modify, repeal, and enforce, as necessary or appropriate to implement or
7 effectuate the purposes and intent of this subchapter, rules and regulations
8 relating to an underground storage tank release detection, prevention,
9 corrective action and financial responsibility program as required by the
10 federal Resource Conservation and Recovery Act of 1976, as amended; and

11 (2) To set reasonable fees for licensure of individuals and annual
12 registration of underground storage tanks and aboveground storage tanks by
13 rule or regulation.

14 (A) The annual registration fee for underground storage
15 tanks shall not exceed *fifty dollars (\$50.00)* per tank. The fee shall be used
16 by the department for administrative and program costs.

17 (B) The annual registration fee for aboveground storage
18 tanks shall not exceed *fifty dollars (\$50.00)* per tank. The fee shall be used
19 by the department for administrative and program costs, and ten dollars
20 (\$10.00) of said fee collected by the department shall be remitted to the
21 State Treasury, there to be deposited as special revenues to the credit of the
22 State Police Fund to be used for the purposes of aboveground storage tank
23 monitoring and regulation by the Department of Arkansas State Police;

24 (b) The department shall have the following powers and duties: (1) To
25 administer and enforce all laws, rules, and regulations relating to an
26 underground storage tank release detection, prevention, and corrective action
27 program, and financial responsibility including the use of any and all
28 appropriate legal remedies to recover costs and collect penalties under this
29 subchapter;

30 (2) To advise, consult, cooperate, and enter agreements with
31 appropriate federal, state, interstate, and local units of government and with
32 affected groups and industries in the formulation of plans and in
33 implementation of a program pursuant to this subchapter;

34 (3) To accept and administer loans and grants from the
35 federal government and from such other sources as may be available to the

1 department for the planning, implementation, and enforcement of an underground
2 storage tank program for release detection, prevention, corrective action ,
3 and financial responsibility;

4 (4) To examine and license individuals for the installation
5 and testing of underground storage tanks;

6 (5) To enter upon any public or private property for the
7 purpose of obtaining information, conducting surveys or investigations, or
8 taking corrective action; and the department may copy or require submission of
9 books, papers, records, memoranda, or data pertaining to the management of
10 underground storage tanks;

11 (6) To enter into a cooperative agreement with the United
12 States Environmental Protection Agency to carry out corrective actions and
13 enforcement activities, including use of funds provided from the federal
14 Leaking Underground Storage Tank Trust Fund; and

15 (7) To take such other action as necessary and appropriate
16 to carry out the purposes of this subchapter and meet the requirements of
17 federal law."

18

19 SECTION 3. Arkansas Code Annotated 8-7-804 is amended to read as
20 follows:

21 "8-7-804. Procedures of department generally. The procedure of the
22 department and commission for issuance of rules and regulations, conduct of
23 hearings, notice, power of subpoena, review of action on permits, right of
24 appeal, presumptions, finality of actions and related matters shall be as
25 provided in §§ 8-4-101 - 8-4-106, and 8-4-201 - 8-4-229, including, but not
26 limited to, §§ 8-4-205, 8-4-210, 8-4-212 - 8-4-214, 8-4-218 - 8-4-229 to the
27 extent they are not in conflict with the provisions of this subchapter."

28

29 SECTION 4. Arkansas Code Annotated 8-7-806 is amended to read as
30 follows:

31 "8-7-806. Penalties. (a) It shall be unlawful for any person:

32 (1) To violate any provision of this subchapter or any rule or
33 regulation adopted under this subchapter;

34 (2) To knowingly make a false statement, representation, or
35 certification in any report or other document submitted under or required by

1 this subchapter or the Petroleum Storage Tank Trust Fund Act, §8-7-901 et
2 seq., or any rule or regulation issued pursuant thereto; or

3 (3) To violate any order issued by the department under this
4 subchapter or any provision of any such order.

5 (b) Any person who knowingly makes a false statement, representation,
6 or certification as described in §8-7-806(a)(2) shall be subject to a civil
7 penalty not to exceed ten thousand dollars (\$10,000) for each such violation.

8 (c) Any owner or operator who fails to give any notification regarding
9 storage tanks required by this subchapter, or any regulation issued pursuant
10 to this subchapter, shall be subject to a civil penalty not to exceed ten
11 thousand dollars (\$10,000) for each storage tank for which notification is not
12 given.

13 (d) Any person who violates any provision of this subchapter, or of
14 any rule, regulation, permit, certification, license, plan or order issued
15 pursuant thereto, or who commits an unlawful act hereunder, may be assessed an
16 administrative civil penalty not to exceed ten thousand dollars (\$10,000) per
17 violation or unlawful act. Each day of a continuing violation or unlawful
18 act may be deemed a separate violation or unlawful act for purposes of penalty
19 assessment. If the violation or unlawful act concerns the operation of an
20 underground storage tank, the penalty shall not exceed ten thousand dollars
21 (\$10,000) for each tank for each day of violation or unlawful action. No
22 civil penalty may be assessed until the person charged with the violation or
23 unlawful act has been given the opportunity for a hearing in accordance with
24 regulations adopted by the commission. The administrative procedures set
25 forth in 18-7-804 may be used to recover all costs, expenses, and damages to
26 the department and any other agency or subdivision of the state in enforcing
27 or effectuating the provisions of this subchapter, including but not limited
28 to natural resource damages.

29 (e) The department is authorized to institute a civil action in any
30 court of competent jurisdiction to accomplish any or all of the following:

31 (1) Restrain any violation of, or compel compliance with, the
32 provisions of this subchapter or of any rule, regulation, permit,
33 certification, license, plan or order issued pursuant thereto, or restrain the
34 commission of any unlawful act hereunder;

35 (2) Affirmatively order that remedial measures be taken as may

1 be necessary or appropriate to implement or effectuate the purposes and intent
2 of this subchapter;

3 (3) Recover all costs, expenses, and damages to the department
4 and any other agency or subdivision of the state in enforcing or effectuating
5 the provisions of this subchapter, including but not limited to natural
6 resource damages;

7 (4) Assess civil penalties in an amount not to exceed ten
8 thousand dollars (\$10,000) per day for violations of this subchapter or of any
9 rule, regulation, permit, certification, license, plan or order issued
10 pursuant thereto, or for any unlawful act hereunder; or

11 (5) Recover civil penalties assessed pursuant to subsection (d)
12 of this section.

13 (f) (1) All civil penalties collected under this section shall be
14 deposited in the Regulated Substance Storage Tank Program Fund.

15 (2) All moneys collected which represent the costs, expenses, or
16 damages of another agency or subdivision of the state shall be distributed to
17 the appropriate governmental entity."

18

19 SECTION 5. Arkansas Code Annotated 8-7-807 is amended to read as
20 follows:

21 "8-7-807. Responsibility and liability of owner.

22 (a) Upon a determination that a release of a regulated substance from
23 an underground storage tank has occurred, the owner or operator shall notify
24 the department. The owner or operator shall immediately undertake to collect
25 and remove the release and to restore the area affected in accordance with the
26 requirements of this subchapter.

27 (b) If the owner or operator fails to proceed as required in subsection
28 (a) of this section, the owner and operator shall be liable to the department
29 for any costs incurred by the department for undertaking corrective action or
30 enforcement action with respect to the release of a regulated substance from
31 an underground storage tank.

32 (c) (1) No adjacent property owner shall unduly impede or interfere
33 with any efforts of the department or the owner or operator to undertake
34 investigation, site assessment, or corrective action in accordance with the
35 requirements of this subchapter.

1 (2) Any adjacent property owner violating subdivision (c)(1) of
2 this section shall be liable for any investigation, site assessment, or
3 corrective action costs resulting from such violation. If the adjacent
4 property owner denies access to property when such access is reasonably
5 necessary for investigation, site assessment, or corrective action undertaken
6 by the department, or by the owner or operator under a department directive,
7 order or approved corrective action plan, the department may order the
8 adjacent property owner to undertake the portion of investigation, site
9 assessment, or corrective action which was prohibited by the denial of access.

10 (d) (1) Any party found liable for any costs or expenditures recoverable
11 under this subchapter which establishes by a preponderance of the evidence
12 that only a portion of such costs or expenditures are attributable to his or
13 her actions shall be required to pay only for that portion.

14 (2) If the trier of facts finds the evidence insufficient to establish
15 each party's portion of costs or expenditures, the court shall apportion the
16 costs or expenditures, to the extent practicable, according to equitable
17 principles, among the responsible parties.

18 (3) In any action under this subchapter no responsible party shall be
19 liable for more than that party's apportioned share of the amount of costs or
20 expenditures recoverable for the site.

21 (4) Any expenditures required under this subchapter made by a
22 responsible party, before or after suit or before or after a complaint has
23 been filed with or heard by the Arkansas State Claims Commission, shall be
24 credited toward any apportioned share.

25 (e) Any costs recovered by the department under this section shall be
26 used to reimburse the Petroleum Storage Tank Trust Fund in the amount utilized
27 by the department and the balance, if any, deposited into the Regulated
28 Substance Storage Tank Program Fund."

29

30 SECTION 6. Arkansas Code Annotated 8-7-809 is amended to read as
31 follows:

32 "8-7-809. Corrective actions - Orders of director.

33 (a) Nothing in this subchapter or the regulations promulgated under
34 this subchapter shall prevent any person from undertaking corrective action
35 which would provide reasonable protection of public health and safety and the

1 environment.

2 (b) (1) Notwithstanding any other provisions of this subchapter, the
3 director, upon finding that the release may present an imminent and
4 substantial hazard to the health of persons or to the environment and that an
5 emergency exists requiring immediate action to protect the public health and
6 welfare or the environment may, without notice or hearing, issue an order
7 reciting the existence of such an imminent hazard and emergency and requiring
8 that such action be taken as he determines to be necessary to protect the
9 health of such persons or the environment and to meet the emergency.

10 (2) The order of the director may include but is not limited to,
11 directing the owner or operator of the site which constitutes the hazard to
12 take such steps as are necessary to prevent the act or eliminate the practice
13 which constitutes the hazard and, with respect to a facility or site, the
14 director may order cessation of operation.

15 (3) Any person to whom the order is directed shall comply with it
16 immediately, but, upon written application to the director within ten (10)
17 days of the issuance of the order, that person shall be afforded a hearing
18 before the Pollution Control and Ecology Commission within ten (10) days after
19 receipt of the written request.

20 (4) On the basis of the hearing, the commission shall continue the
21 order in effect, or shall revoke or modify it."

22

23 SECTION 7. Arkansas Code Annotated 8-7-811 is amended to read as
24 follows:

25 "8-7-811. Trade secrets.

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

31 (b) As necessary to carry out the provisions of this subchapter,
32 information afforded confidential treatment may be transmitted under a
33 continuing claim of confidentiality to other officers or employees of the
34 state or of the United States, if the owner or operator of the facility to
35 which the information pertains is informed of the transmittal and if the

1 information has been acquired by the department under the provisions of this
2 subchapter.

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

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

8

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

11 "8-7-813. (a) All owners and operators of storage tanks must register
12 their tanks as required by federal regulations and in accordance with the
13 regulations adopted hereunder.

14 (b) All owners and operators must maintain proof of current and proper
15 registration at the registered facility and post the proof in a conspicuous
16 place onsite. Proof of registration shall be in the form determined by
17 regulations adopted hereunder.

18 (c) No owner or operator shall receive any regulated substance into any
19 storage tank for which current and proper proof of registration has not been
20 provided to the person selling the regulated substance. Neither shall any
21 person selling any regulated substance deliver, or cause to be delivered,
22 regulated substance into any storage tank for which he has not obtained
23 current and proper proof of registration from the owner or operator.

24 (d) Any person violating any provision of this section shall be subject
25 to the provisions of 8-7-806.

26 (e) *The provisions of this subchapter shall not apply to above ground*
27 *storage tanks located on farms, the contents of which are used for*
28 *agricultural purposes and not held for resale."*

29

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

33

34 SECTION 10. If any provision of this act or the application thereof to
35 any person or circumstance is held invalid, such invalidity shall not affect

1 other provisions or applications of the act which can be given effect without
2 the invalid provision or application, and to this end the provisions of this
3 act are declared to be severable.

4

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

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/s/Senators Everett and Hopkins