

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

ACT 1042 OF 1997
HOUSE BILL 2153

4

5 By: Representatives George, Allison, Angel, Baker, Beatty, Bond, Broadway, Bryant, Cook, Cunningham, Curran, Dietz, Faris,
6 Ferguson, Goodwin, Hall, Hausam, Horn, Hunton, Ingram, Jeffress, Jones, Kidd, Laverty, Luker, Malone, McGehee, McGinnis,
7 McJunkin, McKissack, Miller, Milum, Molinaro, Newman, Pollan, Purdom, Rodgers, Rorie, Schexnayder, Sheppard, Shoffner,
8 Simmons, Simon, Terry Smith, Stalnaker, Stewart, Teague, Thomas, Wagner, Wallis, Wilkins, Wilkinson, Willems, Wilson,
9 Wooldridge, and Young

10 By: Senators Argue, Bell, Boozman, Brown, Fitch, Hill, Hunter, Mahony, Roebuck, Scott, Todd, Walters, Webb, Wilson, and Wyrick

11

12

For An Act To Be Entitled

13

"AN ACT TO RECODIFY AND AMEND THE REMEDIAL ACTION TRUST

14

FUND ACT TO PROVIDE FOR THE VOLUNTARY CLEANUP OF ABANDONED

15

INDUSTRIAL SITES; FURTHER DEFINING THE CLEANUP

16

RESPONSIBILITIES OF INNOCENT PROSPECTIVE PURCHASERS OF

17

ABANDONED INDUSTRIAL SITES; AND FOR OTHER PURPOSES."

18

19

Subtitle

20

"TO PROVIDE FOR THE VOLUNTARY CLEANUP OF

21

ABANDONED SITES; FURTHER DEFINE CLEANUP

22

RESPONSIBILITIES OF PROSPECTIVE

23

PURCHASERS OF ABANDONED SITES."

24

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

26

27 SECTION 1. Chapter 7 of Title 8 of the Arkansas Code is amended by
28 inserting an additional subchapter at the end thereof to read as follows:

29

"8-7-1101. Declaration of Policy.

30

The General Assembly finds and declares as follows:

31

(1) The redevelopment of abandoned industrial, commercial or

32 agricultural sites should be encouraged as a sound land use management policy

33 to prevent the needless development of prime farmland, open space and natural

34 and recreation areas and to prevent urban sprawl.

35

(2) The redevelopment of abandoned sites should be encouraged so that

36 these sites can be returned to useful, tax producing properties to protect

1 existing jobs and provide new job opportunities.

2 (3) Persons interested in redeveloping abandoned sites should have a
 3 method of determining what their legal liabilities and clean up
 4 responsibilities will be as they plan the reuse of abandoned sites.

5 (4) Incentives should be put in place to encourage prospective
 6 purchasers to voluntarily develop and implement clean up plans of abandoned
 7 sites without the need for adversarial enforcement actions by the Arkansas
 8 Department of Pollution Control and Ecology.

9 (5) The Arkansas Department of Pollution Control and Ecology now
 10 routinely, through its permitting policies, determines when contamination will
 11 and will not pose unacceptable risks to public health or the environment and
 12 similar concepts are used in establishing clean up policies for abandoned
 13 sites.

14 (6) Parties and persons responsible under law for pollution at
 15 abandoned sites should perform remedial responses which are fully consistent
 16 with existing requirements.

17 (7) As an incentive to promote the redevelopment of abandoned
 18 industrial sites, persons not responsible for preexisting pollution at or
 19 contamination on industrial sites should meet alternative clean up
 20 requirements if they acquire title after the nature of conditions at the site
 21 have been disclosed and declare and commit to a specified future land use of
 22 the subject site.

23 8-7-1102. Definitions.

24 (1) Abandoned site means a site on which industrial, commercial or
 25 agricultural activity occurred and for which no responsible person can
 26 reasonably be pursued for a remedial response to clean up the site or when the
 27 Department determines it is in the best interest of the citizens of Arkansas
 28 to promote redevelopment under this act while continuing to pursue the
 29 responsible parties;

30 (2) Industrial, commercial or agricultural activity means commercial,
 31 manufacturing, agricultural or any other activity done to further either the
 32 development, manufacturing or distribution of goods and services as well as
 33 soil cultivation, crop or livestock production including, but not limited to,
 34 research and development, warehousing, shipping, transport, remanufacturing,
 35 repair and maintenance of commercial machinery and equipment. (3)

36 Property means property and improvements, including:

1 (A) A facility as defined in the Comprehensive Environmental
 2 Response, Compensation and Liability Act of 1980. 42 U.S.C. § 9601(9).

3 (B) A site as defined in the Arkansas Hazardous Waste Management
 4 Act of 1979. Ark. Code Ann. § 8-7-203(15).

5 (4) Prospective purchaser means a person who expresses a willingness
 6 to acquire an abandoned site and is not responsible for any preexisting
 7 pollution at or contamination on the site.

8 (5) Site assessment means the site assessment to establish the
 9 baseline level of existing contamination on a site. The assessment shall, at
 10 a minimum, identify the location and extent of contamination, the quantity or
 11 level of contamination, the type of contamination, the probable source of
 12 contamination and the risk or threat associated with the contamination as
 13 described in section 8-7-1103 herein. The assessment shall also include a
 14 description of the intended land use of the site."

15 (6) Any other terms of this subchapter not expressly defined shall have
 16 the same definitions as provided in A.C.A. §§8-7-203, 8-7-304, 8-7-403, or 8-
 17 7-503, unless manifestly inconsistent with the provisions and remedial intent
 18 of this subchapter.

19 8-7-1103 Department's authority.

20 The Department shall have authority regarding a voluntary response
 21 program to provide the following:

22 (1) Opportunities for technical assistance for voluntary response
 23 actions.

24 (2) Adequate opportunities for public participation, including prior
 25 notice and opportunity for comment in appropriate circumstances, in selecting
 26 response actions.

27 (3) Streamlined procedures to ensure expeditious voluntary response
 28 actions.

29 (4) Oversight and enforcement authorities or other mechanisms that are
 30 adequate to ensure that--

31 (A) voluntary response actions will protect human health and the
 32 environment and be conducted in accordance with applicable Federal and State
 33 law; and

34 (B) if the person conducting the voluntary response action fails
 35 to complete the necessary response activities, including operation and
 36 maintenance or long-term monitoring activities, the necessary response

1 activities are completed.

2 (5) Mechanisms for approval of a voluntary response action plan.

3 (6) A requirement for certification or similar documentation from the
4 State to the person conducting the voluntary response action indicating that
5 the response is complete.

6 8-7-1104. Voluntary Cleanup Process.

7 (a) This subsection applies to a person who:

8 (1) Is a prospective purchaser of an abandoned industrial,
9 commercial or agricultural property with known or suspected contamination;

10 (2) did not, by act or omission, cause or contribute to any
11 release or threatened release of a hazardous substance on or from the
12 identified abandoned site or is otherwise considered to be a responsible party
13 pursuant to A.C.A. § 8-7-512 (a) (2)-(4); and

14 (3) will reuse or redevelop the property for industrial,
15 commercial or agricultural activities which will sustain or create employment
16 opportunities or otherwise augment the local and/or state economy and tax
17 base.

18 (b) A comprehensive site assessment shall be completed to establish the
19 baseline of existing contamination on the site.

20 (c) Following completion of a comprehensive site assessment, the
21 Department shall determine whether the assessment adequately identifies the
22 environmental risks posed by the abandoned site.

23 (d) The Department and the prospective purchaser shall enter into a
24 consent administrative order based on the results of the comprehensive site
25 assessment. The consent administrative order shall establish clean up
26 liabilities and obligations for the abandoned site. The prospective purchaser
27 shall provide notice of the consent administrative order in a newspaper of
28 general circulation that serves the area in which the abandoned site is
29 located. The notice shall be subject to the approval of the Department. The
30 consent administrative order shall establish the intended use of the property.
31 The description of the intended use shall identify the site and the nature
32 of the activity that the prospective purchaser proposes for the site.

33 (e) Once the prospective purchaser has acquired legal title to the
34 abandoned site, the purchaser will be responsible to remediate, remove and
35 properly dispose of or manage, consistent with applicable requirements, any
36 containerized hazardous substances existing on site at the time of purchase,

1 including drummed waste, lagoons and impoundments and wastes in aboveground
2 and underground tanks which may pose a threat of release. Wastes that are
3 disposed or managed on site will remain subject to applicable requirements.

4 (f) Once the prospective purchaser has acquired legal title to the
5 abandoned site, the purchaser will be responsible to take all necessary steps
6 to prevent migration of hazardous substances beyond the property boundary as
7 appropriate, considering the factors specified at § 8-7-1104(j).

8 (g) Once the prospective purchaser has acquired legal title to the
9 abandoned site, the purchaser shall be responsible to remedy any releases of
10 hazardous substances as identified in the comprehensive site assessment
11 required by A.C.A. §8-7-1104(b).

12 (h) For purposes of subsection (g) above, releases of hazardous
13 substances are those conditions which pose either:

14 (1) An unacceptable risk, either acute or chronic, to the health
15 of employees or any other person likely to be exposed to the release from the
16 site, based upon the intended site use described by the prospective purchaser
17 in the comprehensive site assessment and described by the consent
18 administrative order. A purchaser may not actually use the property in a
19 manner which differs from the intended use identified in the consent
20 administrative order contemplated by subsection (d) above, unless the
21 Department and purchaser agree to a modification of the consent administrative
22 order; or

23 (2) An unacceptable risk to degrade either groundwaters or
24 surface waters, or any risk to degrade the extraordinary resource waters of
25 the State of Arkansas.

26 (i) A remedial action pursuant to subsection (g) above, shall
27 eliminate unacceptable risks and prevent degradation of groundwaters and
28 surface waters which would cause such unacceptable risk and/or degradation
29 described above.

30 (j) The selection of remedial action shall be approved by the
31 Department after reasonable notice and after opportunity for hearing and shall
32 become an amendment to the consent administrative order entered into pursuant
33 to subsection (d) above:

34 (1) Selection of a remedial action shall include consideration of
35 the following factors:

36 (A) The intended and allowable use of the abandoned site;

1 (B) The ability of the contaminants to move in a form and
2 manner which would result in exposure to humans and the surrounding
3 environment at levels considered to be an unacceptable health risk as
4 described in subsection (h)(1) and (2) above;

5 (C) Consideration of the potential environmental risks of
6 proposed alternative remedial action and its technical feasibility,
7 reliability and cost effectiveness;

8 (D) When an imminent and substantial endangerment is posed;
9 and

10 (E) Whether institutional or engineering controls eliminate
11 or partially eliminate the imminent and substantial endangerment or otherwise
12 contain or prevent migration.

13 (2) Remedial actions pursuant to subsection (g) above are not
14 required to provide for the removal or remediation of the conditions or
15 contaminants causing a release or threatened release on the abandoned site if:

16 (A) Contaminants pose no unacceptable risk as described in
17 subsections (h)(1) and (2) or the remedial actions proposed in the assessment
18 and intended uses of the abandoned site will eliminate unacceptable risks as
19 described in subsection (h)(1) and (2) above; or

20 (B) Activities required to allow the intended reuse or
21 redevelopment of the abandoned site are in a manner which will protect public
22 health and the environment as described in subsections (h)(1) and (2) above.

23 (k) Nothing in this subsection shall relieve the prospective purchaser
24 after acquisition of legal title to the abandoned site of any liability for
25 contamination later caused by the purchaser.

26 (l) A prospective purchaser of an abandoned site under this act shall
27 not be responsible for paying any fines or penalties levied against any person
28 responsible for contamination on the abandoned site prior to the consent
29 administrative order with the Department.

30 (m) (1) Once the prospective purchaser has acquired legal title to
31 the abandoned site, the purchaser shall take all the steps necessary to
32 prevent aggravating or contributing to the contamination of the air, land or
33 water, including downward migration of contamination, from any existing
34 contamination on the site.

35 (2) The purchaser shall not use or redevelop the site in any way
36 which is likely to interfere with subsequent remedial actions or in a manner

1 that differs from the intended use established in the consent administrative
 2 order described in subsection (d) above.

3 (n) A restriction shall be placed on the deed for the property covered
 4 by this subchapter which restricts the use of the property to activities and
 5 compatible uses which will protect the integrity of any remedial action
 6 measures implemented on the property.

7 (o) The consent administrative order, including all rights and clean up
 8 liabilities entered into by the Department and the prospective purchaser under
 9 subsection (d) above, is transferable with written notice to the Department in
 10 its entirety to any and all subsequent owners of the property who did not, by
 11 act or omission, cause or contribute to any release or threatened release of
 12 hazardous substances on the abandoned site.

13 (p) Subsequent owners shall receive a copy of the consent
 14 administrative order from the prospective purchaser and shall not use the site
 15 in a manner which is inconsistent with the intended use described in the
 16 consent administrative order authorized by subsection (d) above.

17 (q) (1) Within 30 days of the date that the prospective purchaser
 18 acquires legal title to the abandoned site, the purchaser shall file a notice
 19 of the consent administrative order with the clerk of the circuit court in the
 20 county in which the site is located.

21 (2) Notice of any subsequent amendments to the consent
 22 administrative order shall be also be filed with the clerk of the circuit
 23 court within thirty (30) days after their effective dates.

24 (3) The clerk of the circuit court shall docket and record the
 25 notices so that it appears in the purchaser's chain of title."

26

27 SECTION 2. Arkansas Code 8-7-520 (a) is amended to read as follows:

28 "(a) Any person who has undertaken or is undertaking remedial action at
 29 a hazardous substance site in response to an administrative or judicial order
 30 initiated against such person pursuant to § 8-7-508 or 8-7-~~523~~ 1104(d) may
 31 obtain contribution from any other person who is liable for such hazardous
 32 substance site."

33

34 SECTION 3. Arkansas Code Section 8-7-504 is amended by inserting the
 35 following subsection:

36 "(c) One half (1/2) of the civil penalties provided for in (b)(1), but

1 not to exceed five hundred thousand dollars (\$500,000) in any one calendar
 2 year and not to exceed four million dollars (\$4,000,000) in the aggregate, may
 3 be deposited in the Remedial Action Account in the Construction Assistance
 4 Revolving Loan Fund established pursuant to 15-5-902, if so authorized by the
 5 Director of ADPC&E, and such moneys shall not be deposited or deemed to be a
 6 part of the State Treasury for the purposes of Arkansas Constitution, Article
 7 5, §29; Arkansas Constitution, Article 16, §12; Arkansas Constitution,
 8 Amendment 20; or any other constitutional or statutory provisions."

9

10 SECTION 4. Arkansas Code Section 8-7-509 (c)(2) is amended to read as
 11 follows:

12 "(2) In addition, there is authorized to be deposited in the Hazardous
 13 Substance Remedial Action Trust Fund all moneys recovered pursuant to §8-7-514
 14 and all moneys received as penalties pursuant to §8-7-504 except for that
 15 portion of the civil penalties specified in §8-7-504 (c) to be deposited in
 16 the Remedial Action Account of the Construction Assistance Revolving Loan Fund
 17 established pursuant to 15-5-902."

18

19 SECTION 5. Arkansas Code Section 8-7-509 is amended by inserting the
 20 following subsection:

21 "(f)(1) Notwithstanding the provisions of §§19-6-108 and 19-6-601,
 22 grants to the state under the federal Resource Conservation and Recovery Act,
 23 and the federal Comprehensive Environmental Response, Compensation and
 24 Liability Act, as each may be amended from time to time, and otherwise from
 25 the federal Environmental Protection Agency, received by the Treasurer of
 26 State from the federal government are declared to be cash funds restricted in
 27 their use and dedicated and are to be used solely as authorized in this
 28 subchapter and §§15-5-901 - 15-5-906.

29 (2) The cash funds, when received by the Treasurer of State, shall not
 30 be deposited or deemed to be a part of the State Treasury for the purposes of
 31 Arkansas Constitution, Article 5, §29; Arkansas Constitution, Article 16, §12;
 32 Arkansas Constitution, Amendment 20; or any other constitutional or statutory
 33 provisions.

34 (3) The Treasurer of State shall pay the cash funds to the Arkansas
 35 Development Finance Authority for deposit in the Remedial Action Account of
 36 the Construction Assistance Revolving Loan Fund established pursuant to 15-5-

1 902 to be used for the purposes authorized by this subchapter and §§15-5-901 -
 2 15-5-906.

3 (4) Such federal grants transferred directly to the Arkansas Development
 4 Finance Authority are declared to be cash funds restricted in their use and
 5 dedicated and to be used solely as authorized in this subchapter and §§15-5-
 6 901 - 15-5-906."

7

8 SECTION 6. Arkansas Code Section 15-5-901(b) is amended by inserting
 9 the following additional subsection:

10 "(7) To provide loans to prospective and actual purchasers of abandoned
 11 industrial, commercial, or agricultural sites for assessments, investigations,
 12 and remedial actions pursuant to §8-7-1101, as amended from time to time."

13

14 SECTION 7. Arkansas Code Section 15-5-901 if amended by inserting the
 15 following additional section:

16 "(d) There is hereby established a separate account within the fund,
 17 designated the Remedial Action Account, into which moneys identified in § 8-
 18 7-504 (c) and any other moneys as designated by the Director of the Department
 19 shall be deposited. Moneys in the Remedial Action Account may be expended as
 20 authorized in § 8-7-1101 and for the same purposes as other moneys in the
 21 fund."

22

23 SECTION 8. Arkansas Code Section 15-5-902(a) is amended to read as
 24 follows:

25 "(a) The fund shall be administered by the department, as agent for the
 26 authority, and the department is authorized to establish procedures and adopt
 27 such regulations as may be required to administer the fund and programs
 28 financed in whole or in part with moneys in the fund in accordance with
 29 federal or state law providing for public wastewater systems, water systems,
 30 solid and hazardous waste facilities, recycling facilities, and other
 31 environmental infrastructure projects and for assessments, investigations, and
 32 remedial actions with respect to abandoned industrial, commercial, or
 33 agricultural sites, including, without limitation, the federal Water Pollution
 34 Control Act, also known as the Clean Water Act, the federal Safe Drinking
 35 Water Act, the federal Resource Conservation and Recovery Act of 1976, and the
 36 federal Clean Air Act, and the federal Comprehensive Environmental Response,

1 Compensation, and Liability Act, as each may be amended from time to time, and
 2 otherwise from the federal Environmental Protection Agency, and to enter into
 3 contracts and other agreements in connection with the operation of the fund,
 4 including, but not limited to, contracts and agreements with federal agencies,
 5 local governmental entities, the authority and other ~~parties~~ persons to the
 6 extent necessary or convenient for the implementation of the fund program."
 7

8 SECTION 9. Arkansas Code Section 15-5-904 (a) is amended to read as
 9 follows:

10 "(a) The department is hereby authorized to establish fees for its
 11 technical and administrative services in connection with construction or
 12 rehabilitation of public wastewater systems, water systems, solid and
 13 hazardous waste facilities, recycling facilities, and other environmental
 14 infrastructure projects and in connection with assessments, investigations,
 15 and remedial actions with respect to abandoned industrial, commercial, or
 16 agricultural sites, financed in whole or in part with moneys in the fund. The
 17 authority granted in this section shall be supplemental to the authority
 18 granted to the department under other laws to establish fees for its
 19 services."
 20

21 SECTION 10. All provisions of this act of a general and permanent
 22 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
 23 Code Revision Commission shall incorporate the same in the Code.
 24

25 SECTION 11. If any provision of this act or the application thereof to
 26 any person or circumstance is held invalid, such invalidity shall not affect
 27 other provisions or applications of the act which can be given effect without
 28 the invalid provision or application, and to this end the provisions of this
 29 act are declared to be severable.
 30

31 SECTION 12. (a) Arkansas Code 8-7-503(13) through (17) are repealed.

32 ~~—— (13) "Abandoned industrial site" means a site on which one had an~~
 33 ~~industrial activity and for which no responsible person can reasonably be~~
 34 ~~pursued for a remedial response to clean up the site;~~

35 ~~—— (14) "Industrial activity" means commercial, manufacturing, or any~~
 36 ~~other activity done to further either the development, manufacturing, or~~

1 ~~distribution of goods and services, including, but not limited to, research~~
 2 ~~and development, warehousing, shipping, transport, remanufacturing, repair,~~
 3 ~~and maintenance of commercial machinery and equipment;~~

4 ~~_____ (15) "Property" means real property and improvements, including:~~

5 ~~_____ (A) A facility, as defined in the Comprehensive Environmental~~
 6 ~~Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(9); and~~

7 ~~_____ (B) A site, as defined in § 8-7-203(15);~~

8 ~~_____ (16) "Prospective purchaser" means a person who expresses a willingness~~
 9 ~~to acquire an abandoned industrial site and is not responsible for any~~
 10 ~~preexisting pollution at or contamination on the site; and~~

11 ~~_____ (17)(A) "Site assessment" means the site assessment submitted by a~~
 12 ~~prospective purchaser to establish the baseline level of existing~~
 13 ~~contamination on a site.~~

14 ~~_____ (B)(i) The assessment shall, at a minimum, identify the location~~
 15 ~~and extent of contamination, the quantity or level of contamination, the type~~
 16 ~~of contamination, the probable source of contamination and the risk or threat~~
 17 ~~associated with the contamination, as described in § 8-7-523.~~

18 ~~_____ (ii) The assessment shall also include a description of the use~~
 19 ~~which the prospective purchaser intends to make of the site.~~

20 (b) Arkansas Code 8-7-523 is repealed.

21 ~~_____ § 8-7-523. Applicability - Prospective purchaser.~~

22 ~~_____ (a) This subchapter applies to a person who:~~

23 ~~_____ (1) Is a prospective purchaser of an abandoned industrial site;~~

24 ~~_____ (2) Did not, by act or omission, cause or contribute to any release or~~
 25 ~~threatened release of a hazardous substance on or from the identified~~
 26 ~~abandoned industrial site or is not otherwise considered to be a responsible~~
 27 ~~party pursuant to § 8-7-512(a)(2)-(4); and~~

28 ~~_____ (3) Will reuse or redevelop the property for industrial activities to~~
 29 ~~create employment expansion.~~

30 ~~_____ (b)(1) A prospective purchaser who wishes to take advantage of the~~
 31 ~~limitation of liability under this subchapter shall submit a proposed~~
 32 ~~comprehensive site assessment to the department for review and comment to~~
 33 ~~establish the baseline of existing contamination on the site. _____ (2)~~

34 ~~If the prospective purchaser elects to proceed upon receipt of the~~
 35 ~~department's comments, the prospective purchaser shall perform the~~
 36 ~~comprehensive site assessment consistent with the department's comments.~~

1 ~~—— (c) Following completion of a comprehensive site assessment, the~~
2 ~~department shall determine whether the assessment adequately identifies the~~
3 ~~environmental risks posed by the abandoned industrial site.~~

4 ~~—— (d)(1) The department and the prospective purchaser shall enter into a~~
5 ~~consent administrative order based on the results of the comprehensive site~~
6 ~~assessment.~~

7 ~~—— (2) The consent administrative order shall establish cleanup~~
8 ~~liabilities and obligations for the abandoned industrial site.~~

9 ~~—— (3)(A) The prospective purchaser shall provide notice of the consent~~
10 ~~administrative order in a newspaper of general circulation that serves the~~
11 ~~area in which the abandoned industrial site is located.~~

12 ~~—— (B) The notice shall be subject to the approval of the~~
13 ~~department.~~

14 ~~—— (4)(A) The consent administrative order shall establish the intended~~
15 ~~use of the property that was preliminarily described in the comprehensive site~~
16 ~~assessment.~~

17 ~~—— (B) The description of the intended use shall identify the site~~
18 ~~and the nature of the activity that the prospective purchaser proposes for the~~
19 ~~site.~~

20 ~~—— (e)(1) Once the prospective purchaser has acquired legal title to the~~
21 ~~abandoned industrial site, the purchaser will be responsible to remediate,~~
22 ~~remove, and properly dispose of or manage, consistent with applicable~~
23 ~~requirements, any containerized wastes existing on the site at the time of~~
24 ~~purchase, including drummed waste, lagoons, and impoundments and wastes in~~
25 ~~aboveground and underground tanks.~~

26 ~~—— (2) Wastes that are disposed of or managed on the site will remain~~
27 ~~subject to applicable requirements.~~

28 ~~—— (f) Once the prospective purchaser has acquired legal title to the~~
29 ~~abandoned industrial site, the purchaser will be responsible to take all~~
30 ~~necessary steps to prevent migration of hazardous substances beyond the~~
31 ~~property boundary.~~

32 ~~—— (g) Once the prospective purchaser has acquired legal title to the~~
33 ~~abandoned industrial site, the purchaser shall be responsible to remedy any~~
34 ~~releases of hazardous substances.~~

35 ~~—— (h) For purposes of subsection (g) of this section, releases of~~
36 ~~hazardous substances are those conditions which pose either:~~

1 ~~———— (1)(A) An unacceptable risk, either acute or chronic, to the health of~~
 2 ~~employees or any other person likely to be exposed to the release at the site,~~
 3 ~~based upon the intended site use described by the prospective buyer in its~~
 4 ~~comprehensive site assessment and described by the consent administrative~~
 5 ~~order.~~

6 ~~———— (B) A buyer may not use the property in a manner which differs~~
 7 ~~from the intended use identified in the consent administrative order~~
 8 ~~contemplated by subsection (d) of this section unless the department and the~~
 9 ~~buyer agree to a modification of the consent administrative order; or~~

10 ~~———— (2) An unacceptable risk to degrade either groundwaters or surface~~
 11 ~~waters or any risk to degrade the extraordinary resource waters of the State~~
 12 ~~of Arkansas.~~

13 ~~———— (i) A remedial action pursuant to subsection (g) of this section shall~~
 14 ~~eliminate unacceptable risks and prevent degradation of groundwaters and~~
 15 ~~surface waters which would cause such unacceptable risk and/or degradation~~
 16 ~~described above.~~

17 ~~———— (j)(1) The selection of remedial action shall be approved by the~~
 18 ~~department after reasonable notice and after opportunity for hearing and shall~~
 19 ~~become an amendment to the consent administrative order entered into pursuant~~
 20 ~~to subsection (d) of this section.~~

21 ~~———— (2) Selection of a remedial action shall include consideration of the~~
 22 ~~following factors:~~

23 ~~———— (A) The intended and allowable use of the abandoned industrial~~
 24 ~~site;~~

25 ~~———— (B) The ability of the contaminants to move in a form and manner~~
 26 ~~which would result in exposure to humans and the surrounding environment at~~
 27 ~~levels considered to be a significant health risk as described in subdivision~~
 28 ~~(h)(1)(A) of this section;~~

29 ~~———— (C) Consideration of the potential environmental risks of~~
 30 ~~proposed alternative remedial action and its technical feasibility,~~
 31 ~~reliability, and cost effectiveness;~~

32 ~~———— (D) When an imminent and substantial endangerment is posed; and~~

33 ~~———— (E) Whether institutional or engineering controls eliminate or~~
 34 ~~partially eliminate the imminent and substantial endangerment or otherwise~~
 35 ~~contain or prevent migration.~~

36 ~~———— (3) Remedial actions pursuant to subsection (g) of this section are not~~

1 ~~required to provide for the removal or remediation of the conditions or~~
 2 ~~contaminants causing a release or threatened release on the abandoned~~
 3 ~~industrial site if:~~

4 ~~_____ (A) Contaminants pose no unacceptable risk as described in~~
 5 ~~subdivisions (h)(1)(A) and (2) of this section, or the remedial actions~~
 6 ~~proposed in the assessment and intended uses of the industrial site will~~
 7 ~~eliminate unacceptable risks as described in subdivisions (h)(1)(A) and (2) of~~
 8 ~~this section; or~~

9 ~~_____ (B) Activities required to allow the intended reuse or~~
 10 ~~redevelopment of the industrial site are done in a manner which will protect~~
 11 ~~public health and the environment as described in subdivisions (h)(1) and (2)~~
 12 ~~of this section.~~

13 ~~_____ (k) Nothing in this subchapter shall relieve the prospective purchaser~~
 14 ~~after acquisition of legal title to the abandoned industrial site of any~~
 15 ~~liability for contamination later caused by the purchaser.~~

16 ~~_____ (l) A prospective purchaser of an abandoned industrial site under this~~
 17 ~~subchapter shall not be responsible for paying any fines or penalties levied~~
 18 ~~against any person responsible for contamination on the abandoned industrial~~
 19 ~~site prior to the consent administrative order with the department.~~

20 ~~_____ (m) This subchapter shall not relieve the purchaser of any liability~~
 21 ~~under law for preexisting problems not identified in the comprehensive site~~
 22 ~~assessment.~~

23 ~~_____ (n)(1) Once the prospective purchaser has acquired legal title to the~~
 24 ~~abandoned industrial site, the purchaser shall take all the steps necessary to~~
 25 ~~prevent aggravating or contributing to the contamination of the air, land, or~~
 26 ~~water, including downward migration of contamination, from any existing~~
 27 ~~contamination on the site.~~

28 ~~_____ (2) The purchaser shall not use or redevelop the site in any way which~~
 29 ~~is likely to interfere with subsequent remedial actions or in a manner that~~
 30 ~~differs from the intended use established in the consent administrative order~~
 31 ~~described in subsection (d) of this section.~~

32 ~~_____ (o) A restriction shall be placed on the deed for the property covered~~
 33 ~~by this subchapter which restricts the use of the property to industrial~~
 34 ~~activities and compatible uses which will protect the integrity of any~~
 35 ~~remedial action measures implemented on the property.~~

36 ~~_____ (p) The consent administrative order, including all rights and cleanup~~

1 ~~liabilities entered into by the department and the prospective purchaser under~~
 2 ~~subsection (d) of this section, is transferable with written notice to the~~
 3 ~~department in its entirety to any and all subsequent owners of the property~~
 4 ~~who did not, by act or omission, cause or contribute to any release or~~
 5 ~~threatened release of hazardous substances on the industrial site.~~

6 ~~—— (q) Subsequent owners shall receive a copy of the consent~~
 7 ~~administrative order from the prospective purchaser and shall not use the site~~
 8 ~~in a manner which is inconsistent with the intended use described in the~~
 9 ~~consent administrative order authorized by subsection (d) of this section.~~

10 ~~—— (r)(1) Within thirty (30) days after the date the prospective purchaser~~
 11 ~~acquires legal title to the abandoned industrial site, the purchaser shall~~
 12 ~~file a notice of the consent administrative order with the clerk of the~~
 13 ~~chancery court in the county in which the site is located.~~

14 ~~—— (2) Notice of any subsequent amendments to the consent administrative~~
 15 ~~order shall also be filed with the clerk of the chancery court within thirty~~
 16 ~~(30) days after their effective dates.~~

17 ~~—— (3) The clerk of the chancery court shall docket and record the notices~~
 18 ~~so that they appear in the purchaser's chain of title.~~

19 (c) All other laws and parts of laws in conflict with this act are
 20 hereby repealed.

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APPROVED: 4-02-97