

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 1164 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 562

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5 By: Senator Steele
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For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW REGARDING VOLUNTARY
10 CLEANUP OF HAZARDOUS WASTE SITES; TO CLARIFY
11 WHICH PROPERTIES AND ACTIVITIES ARE ELIGIBLE FOR
12 PARTICIPATION IN THE VOLUNTARY CLEANUP PROGRAM;
13 AND FOR OTHER PURPOSES.
14

Subtitle

15 AN ACT TO AMEND THE LAW REGARDING
16 VOLUNTARY CLEANUP OF HAZARDOUS WASTE
17 SITES.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code § 8-7-1101 is amended to read as follows:
24 8-7-1101. Declaration of policy.

25 The General Assembly finds and declares as follows:

26 (1) The redevelopment of abandoned industrial, commercial, ~~or~~
27 agricultural sites, or abandoned residential property should be encouraged as
28 a sound land use management policy to prevent the needless development of
29 prime farmland, open spaces, and natural and recreation areas and to prevent
30 urban sprawl;

31 (2) The redevelopment of abandoned sites should be encouraged so
32 that these sites can be returned to useful, tax-producing properties to
33 protect existing jobs and provide new job opportunities;

34 (3) Persons interested in redeveloping abandoned sites should
35 have a method of determining what their legal liabilities and ~~clean-up~~



1 cleanup responsibilities will be as they plan the reuse of abandoned sites;

2 (4) Incentives should be put in place to encourage prospective
3 purchasers to voluntarily develop and implement ~~clean-up~~ cleanup plans of
4 abandoned sites without the need for adversarial enforcement actions by the
5 Arkansas Department of Environmental Quality;

6 (5) The department now routinely determines, through its
7 permitting policies, when contamination will and will not pose unacceptable
8 risks to public health or the environment, and similar concepts are used in
9 establishing ~~clean-up~~ cleanup policies for abandoned sites;

10 (6) Parties and persons responsible under the law for pollution
11 at abandoned sites should perform remedial responses which are fully
12 consistent with existing requirements;

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

19 (8)(A) Property transactions at times necessitate title
20 acquisition prior to completion of the actions contemplated at § 8-7-1104(b)-
21 (d) by persons not previously involved with the site or otherwise considered
22 responsible parties for environmental conditions at a site.

23 (B) These persons should not be foreclosed from
24 participation under the procedures enacted under this subchapter.

25 (C) Therefore, these persons, at the discretion of the
26 director, may submit a letter of intent that will set forth the persons'
27 desire to purchase the site and retain their eligibility for participation in
28 the voluntary cleanup program established by this subchapter.

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30 SECTION 2. Arkansas Code § 8-7-1102(a), providing definitions
31 concerning voluntary clean up of hazardous waste sites, is amended to read as
32 follows:

33 (a) As used in this subchapter, unless the context otherwise requires:

34 (1) "Abandoned site" means a site on which industrial,
35 commercial, or agricultural activity occurred and for which no responsible
36 person can reasonably be pursued for a remedial response to clean up the site

1 or residential property, or when the Arkansas Department of Environmental
 2 Quality determines it is in the best interest of the citizens of Arkansas to
 3 promote redevelopment under this subchapter while continuing to pursue the
 4 responsible party or parties;

5 (2) "Implementing agreement" means a plan, order, memorandum of
 6 agreement, or other enforceable document issued by the department under
 7 provisions of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201
 8 et seq., the Remedial Action Trust Fund Act, § 8-7-501 et seq., or this
 9 subchapter, to implement the voluntary cleanup process described in § 8-7-
 10 1104;

11 (3) "Industrial, commercial, or agricultural activity" means
 12 commercial, manufacturing, agricultural, or any other activity done to
 13 further either the development, manufacturing, or distribution of goods and
 14 services, as well as soil cultivation and crop or livestock production,
 15 including, but not limited to, research and development, warehousing,
 16 shipping, transport, remanufacturing, repair, and maintenance of commercial
 17 machinery and equipment;

18 (4) "Property" means property and improvements, including:

19 (A) A facility as defined in the Comprehensive
 20 Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §
 21 9601(9); and

22 (B) A site as defined in § 8-7-203(11);

23 (5) "Prospective purchaser" means a person who expresses a
 24 willingness to acquire an abandoned site and is not responsible for any
 25 preexisting pollution at or contamination on the site; ~~and~~

26 (6) "Residential property" means any real property used as a
 27 dwelling or property with four (4) or fewer dwelling units used exclusively
 28 for residential use; and

29 ~~(6)(A)(7)(A)~~ "Site assessment" means the site assessment to
 30 establish the baseline level of existing contamination on a site.

31 (B) The assessment shall identify, at a minimum, the
 32 location and extent of contamination, the quantity or level of contamination,
 33 the type of contamination, the probable source of contamination, and the risk
 34 or threat associated with the contamination as described in § 8-7-1104.

35 (C) The assessment also shall include a description of the
 36 intended land use of the site.

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 2 SECTION 3. Arkansas Code § 8-7-1103 is amended to read as follows:
 3 8-7-1103. Department's authority.

4 (a) The Arkansas Department of Environmental Quality shall have
 5 authority regarding a voluntary response program to provide the following:

6 (1) Opportunities for technical assistance for voluntary
 7 response actions;

8 (2) Adequate opportunities for public participation, including
 9 prior notice and opportunity for comment in appropriate circumstances, in
 10 selecting response actions;

11 (3) Streamlined procedures to ensure expeditious voluntary
 12 response actions;

13 (4) Oversight and enforcement authorities or other mechanisms
 14 that are adequate to ensure that:

15 (A) Voluntary response actions will protect human health
 16 and the environment and be conducted in accordance with applicable federal
 17 and state laws; and

18 (B) If the person conducting the voluntary response action
 19 fails to complete the necessary response activities, including operation and
 20 maintenance or long-term monitoring activities, the necessary response
 21 activities are completed;

22 (5) Mechanisms for approval of a voluntary response action plan;
 23 and

24 (6)(A) A requirement for certification or similar documentation
 25 from the ~~state~~ department to the person conducting the voluntary response
 26 action indicating that the response is complete.

27 (B) This certification shall document any conditions,
 28 restrictions, or limitations on the release from liability for contamination
 29 existing at the site before the department and the prospective purchaser
 30 enter into an implementing agreement.

31 (b) The department may establish and administer a revolving loan fund
 32 to make secured and unsecured loans or grants to eligible participants for
 33 the purpose of financing the assessment, investigation, or remedial actions
 34 at abandoned industrial, commercial, or agricultural sites, or abandoned
 35 residential property.

1 SECTION 4. Arkansas Code § 8-7-1104(a), concerning the voluntary
2 cleanup process, is amended to read as follows:

3 (a) This section applies:

4 (1) To a person who:

5 (A) Is a prospective purchaser of an abandoned industrial,
6 commercial, or agricultural property with known or suspected contamination;

7 (B) Is a prospective purchaser of abandoned residential
8 property;

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

13 ~~(C)(D)~~ Will reuse or redevelop the property for
14 industrial, commercial, ~~or agricultural activities~~ agricultural, or
15 residential uses which will sustain or create employment opportunities or
16 otherwise augment the local or state economy and tax base, or both; or

17 (2) To a person who:

18 (A) Is not a responsible party pursuant to § 8-7-
19 512(a)(2)-(4);

20 (B) Submits a Letter of Intent to Participate; and

21 (C) Subsequently acquires title to an abandoned site prior
22 to completion of an implementing agreement as set forth in subsection (d) of
23 this section.

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26 APPROVED: 3/22/2005
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