

**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 264 of the Regular Session**

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 1566

5 By: Representative Key
6
7

For An Act To Be Entitled

AN ACT TO INCORPORATE REQUIREMENTS OF THE FEDERAL
ENERGY POLICY ACT OF 2005 REGARDING UNDERGROUND
STORAGE TANKS INTO THE ARKANSAS CODE; AND FOR
OTHER PURPOSES.

Subtitle

AN ACT TO INCORPORATE NEW FEDERAL LAWS
REGARDING UNDERGROUND STORAGE TANKS INTO
THE ARKANSAS CODE.

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

22 SECTION 1. Arkansas Code § 8-7-801 is amended to read as follows:

23 8-7-801. Definitions and exceptions.

24 As used in this subchapter:

25 (1)(A) "Aboveground storage tank" means any one (1) or a
26 combination of containers, vessels, and enclosures located aboveground
27 including structures and appurtenances connected to them, whose capacity is
28 greater than one thousand three hundred twenty gallons (1,320 gals.) and not
29 more than forty thousand gallons (40,000 gals.) and that is used to contain
30 or dispense motor fuels, distillate special fuels, or other refined petroleum
31 products.

32 (B) Such term does not include mobile storage tanks used
33 to transport petroleum from one location to another or those used in the
34 production of petroleum or natural gas;

35 (2) "Adjacent property owner" means any person, other than an



1 owner or operator, owning an interest in any property affected by a release;

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

4 (4) "Department" mean the Arkansas Department of Environmental
5 Quality;

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

8 (6)(A) "Owner" means:

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

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

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

19 (7) "Person" means any individual, corporation, company, firm,
20 partnership, association, trust, joint-stock company or trust, venture, or
21 municipal, state, or federal government or agency, or any other legal entity,
22 however organized;

23 (8) "Petroleum" mean petroleum, including crude oil or any
24 fraction thereof, which is liquid at standard conditions of temperature and
25 pressure (sixty degrees Fahrenheit (60° F) and fourteen and seven-tenths
26 pounds (14.7 lbs.) per square inch absolute);

27 (9) "Regulated substance" means:

28 (A) Any substance defined in section 101(14) of the
29 Comprehensive Environmental Response, Compensation, and Liability Act of
30 1980, but not including any substance regulated as a hazardous waste under
31 Subtitle C of the Resource Conservation and Recovery Act of 1976; and

32 (B) Petroleum;

33 (10)(A) "Release" means any spilling, leaking, emitting,
34 discharging, escaping, leaching, or disposing from an underground storage
35 tank into groundwater, surface water, or subsurface soils.

36 (B) "Release" does not include releases that are permitted

1 or authorized by the department or by federal law;

2 (11) "Secondary containment" means a release prevention and
3 release detection system for an underground storage tank or piping, or both,
4 that provides an inner barrier and an outer barrier and an interstitial space
5 between the two barriers for monitoring to detect the presence of a leak or
6 release of regulated substances from the underground storage tank or piping,
7 or both;

8 ~~(11)~~(12) "Storage tank" means an aboveground storage tank or
9 underground storage tank as defined in this subchapter;

10 ~~12(A)~~(13)(A) "Storage tank self-inspection audit" means a
11 checklist or form issued by the department addressing the compliance status
12 of a storage tank that the owner or operator completes on an annual basis.

13 (B) The storage tank self-inspection audit shall accompany
14 or be a part of other documents the department requires the owner or operator
15 to execute on an annual basis; and

16 ~~(13)~~(14) "Underground storage tank" means any one (1) or
17 combination of tanks, including underground pipes connected thereto, which is
18 or has been used to contain an accumulation of regulated substances, and the
19 volume of which, including the volume of the underground pipes connected
20 thereto, is ten percent (10%) or more beneath the surface of the ground.
21 Such term does not include any:

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

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

27 (C) Septic tank;

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

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

31 (ii) The Hazardous Liquid Pipeline Safety Act of
32 1979;

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

34 (F) Storm water or wastewater collection system;

35 (G) Flow-through process tank;

36 (H) Liquid trap or associated gathering lines directly

1 related to oil or gas production and gathering operations;

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

5 (J) Pipes connected to any tank which is described in
6 subdivisions ~~(13)~~(14)(A)-(I) of this section.

7

8 SECTION 2. Arkansas Code § 8-7-802(a), concerning the powers and
9 duties of the department and commission, is hereby amended to read as
10 follows:

11 (a) The Arkansas Pollution Control and Ecology Commission shall have
12 the following powers and duties:

13 (1) To promulgate, after notice and public hearing, and to
14 modify, repeal, and enforce, as necessary or appropriate to implement or
15 effectuate the purposes and intent of this subchapter, rules and regulations
16 relating to an underground storage tank release detection, prevention,
17 corrective action, and financial responsibility program as required by the
18 federal Resource Conservation and Recovery Act of 1976 and the Energy Policy
19 Act of 2005, Public Law No. 109-58; and

20 (2)(A) To set reasonable fees for licensure of individuals and
21 annual registration of underground storage tanks and aboveground storage
22 tanks by rule or regulation.

23 (B)(i) The annual registration fee for underground storage
24 tanks shall not exceed seventy-five dollars (\$75.00) per tank.

25 (ii) The fee shall be used by the Arkansas
26 Department of Environmental Quality for administrative and program costs.

27 (C)(i) The annual registration fee for aboveground storage
28 tanks shall not exceed seventy-five dollars (\$75.00) per tank.

29 (ii) The fee shall be used by the Arkansas
30 Department of Environmental Quality for administrative and program costs, and
31 ten dollars (\$10.00) of the fee collected by the Arkansas Department of
32 Environmental Quality shall be remitted to the State Treasury, there to be
33 deposited as special revenues to the credit of the Department of Arkansas
34 State Police Fund to be used for the purposes of aboveground storage tank
35 monitoring and regulation by the Department of Arkansas State Police.

36

1 SECTION 3. Arkansas Code § 8-7-814 is hereby amended to read as
 2 follows:

3 8-7-814. ~~Upgrade compliance.~~ Delivery prohibition.

4 ~~(a) All owners and operators of underground storage tanks must upgrade~~
 5 ~~their tanks as required by federal regulations and in accordance with the~~
 6 ~~regulations adopted under this subchapter.~~

7 (a) It shall be unlawful to deliver to, deposit into, or accept a
 8 regulated substance into an underground storage tank at a facility that has
 9 been identified by the department to be ineligible for fuel delivery or
 10 deposit.

11 ~~(b) The Arkansas Department of Environmental Quality shall provide~~
 12 ~~notification to the owner or operator by written communication or an affixed~~
 13 ~~written communication on the underground storage tank system that the system~~
 14 ~~is not in compliance with state law or regulations pertaining to upgrade~~
 15 ~~requirements for underground storage tanks.~~

16 (b) The Arkansas Pollution Control & Ecology Commission shall adopt
 17 regulations to implement the criteria and process required by the delivery
 18 prohibition requirements of the Energy Policy Act of 2005, Public Law No.
 19 109-58, and the regulations shall consist of, at a minimum, the federal
 20 guidelines for determining the significant operational compliance of
 21 underground storage tank systems.

22 ~~(c) No owner or operator shall receive any regulated substance into~~
 23 ~~any underground storage tank which has not been upgraded in accordance with~~
 24 ~~state law or regulations.~~

25 (c) In order to prevent the delivery of a regulated substance into an
 26 underground storage tank system that has been identified by the department to
 27 be ineligible for fuel delivery or deposit, the department shall affix a
 28 tamper-proof tag, seal, or other device blocking the fill pipes of the
 29 ineligible underground storage tank. This affixed notice shall serve as
 30 written notification to the owner, the operator, and the product delivery
 31 industry.

32 ~~(d) No person shall sell any regulated substance or deliver or cause~~
 33 ~~to be delivered a regulated substance into any underground storage tank which~~
 34 ~~has not been upgraded in accordance with state law and regulations and to~~
 35 ~~which notification of noncompliance has been affixed.~~

36 (d) No owner or operator shall receive any regulated substance into

1 any underground storage tank to which notification of delivery prohibition
2 has been affixed.

3 (e) No person selling any regulated substance shall deliver or cause
4 to be delivered a regulated substance into any underground storage tank to
5 which notification of delivery prohibition has been affixed.

6 (f) It shall be unlawful for any person, other than an authorized
7 representative of the department, to remove, tamper with, destroy, or damage
8 a device affixed to any underground storage tank by department personnel.

9 ~~(e)~~(g) Any person violating any provision of this section shall be
10 subject to an assessment of an administrative civil penalty as set forth in
11 this subchapter.

12
13 SECTION 4. Arkansas Code Title 8, Chapter 7, Subchapter 8 is amended
14 to add an additional section to read as follows:

15 8-7-816. Secondary containment.

16 (a)(1) Each new underground storage tank, or piping connected to any
17 new underground storage tank, installed after July 1, 2007, shall be
18 secondarily contained and monitored for leaks if the new underground storage
19 tank or piping is within one thousand feet (1,000') of any existing community
20 water system or any existing potable drinking water well.

21 (2) In the case of a new underground storage tank system
22 consisting of one (1) or more underground storage tanks and connected by
23 piping, the requirement to provide secondary containment shall apply to all
24 underground storage tanks and connected pipes comprising such system.

25 (b)(1) Any existing underground storage tank, or existing piping
26 connected to such existing underground storage tank, that is replaced after
27 July 1, 2007, shall be secondarily contained and monitored for leaks if the
28 replaced underground storage tank or piping is within one thousand feet
29 (1,000') of any existing community water system or any existing potable
30 drinking water well.

31 (2) In the case of a replacement of an existing underground
32 storage tank, or existing piping connected to the underground storage tank,
33 the requirement to provide secondary containment shall apply only to the
34 specific underground storage tank or piping being replaced, not to other
35 underground storage tanks and connected pipes comprising such system.

36 (3) With respect to piping, "replace" means to remove and put

1 back in more than five feet (5') of piping associated with a single
 2 underground storage tank.

3 (c)(1) Each installation of a new motor fuel dispenser system, or
 4 replacement of an existing motor fuel dispenser system, after July 1, 2007,
 5 shall include under-dispenser spill containment if the new or replaced
 6 dispenser is within one thousand feet (1,000') of any existing community
 7 water system or any existing potable drinking water well.

8 (2) A motor fuel dispenser system is considered to have been
 9 replaced when an existing motor fuel dispenser and the equipment necessary to
 10 connect the motor fuel dispenser to the underground storage tank system are
 11 removed, and another motor fuel dispenser and the equipment necessary to
 12 connect the motor fuel dispenser to the underground storage tank system are
 13 put in its place.

14 (d) All secondary containment installed shall comply with federal
 15 regulations for underground storage tanks and the regulations adopted under
 16 this subchapter.

17 (e) Any person violating any provision of this section shall be
 18 subject to the provisions of § 8-7-806.

19
 20 SECTION 5. Arkansas Code Title 8, Chapter 7, Subchapter 8 is amended
 21 to add an additional section to read as follows:

22 8-7-817. Operator training.

23 (a) All operators of underground storage tank systems shall complete
 24 training in the operation and maintenance of underground storage tank systems
 25 in accordance with regulations promulgated under this section.

26 (b) For purposes of compliance with this section, the following
 27 persons shall be considered "operators" required to receive operator
 28 training:

29 (1) Persons having primary responsibility for on-site operation
 30 and maintenance of underground storage tank systems;

31 (2) Persons having daily on-site responsibility for the
 32 operation and maintenance of underground storage tank systems; and

33 (3) Daily, on-site employees having primary responsibility for
 34 addressing emergencies presented by a spill or release from an underground
 35 storage tank system.

36

