

Act 65 of the Third Special Session of 1989.

Act 65

HB1084

By: Representative Cunningham

For An Act To Be Entitled
"AN ACT TO AMEND THE PETROLEUM STORAGE TANK TRUST FUND ACT
TO LOWER PER OCCURRENCE DEDUCTIBLES; TO PROVIDE INCREASED
COVERAGE FOR THIRD PARTY CLAIMS; AND FOR OTHER PURPOSES."

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

SECTION 1. Subsection (18) of Section 2 of Act 173 of 1989 is hereby amended to read as follows:

"(18) 'Underground storage tank' means any one or combination of tanks (including underground pipes connected thereto) which is or has been used to contain petroleum, and the volume of which (including the volume of the underground pipes connected thereto) is ten (10) per centum or more beneath the surface of the ground. Such term does not include any:

(A) farm or residential tank of 1,100 gallon or less capacity used for storing motor fuel for noncommercial purposes,

(B) tank used for storing heating oil for consumptive use of the premises where stored,

(C) septic tank,

(D) intrastate and interstate pipeline facilities regulated by the Public Service Commission or other applicable State or federal agency and all other pipeline facilities, including gathering lines regulated under:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.) (49 USCS Appx. 1671 et seq.),

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.),"

SECTION 2. Section 2 of Act 173 of 1989 is hereby amended by adding a new subsection at the end thereof to read as follows:

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

SECTION 3. Subsection (e)(1) of Section 3 of Act 173 of 1989 is hereby amended to read as follows:

"(e)(1) No expenditure from the fund shall be made prior to the approval of the commission except in case of an emergency, in which case a disbursement or reimbursement of less than fifty thousand dollars (\$50,000) can be made at the discretion of the Director."

SECTION 4. Section 3 of Act 173 of 1989 is hereby amended by adding a new subsection (g) which shall read as follows:

"(g) The liability or obligation of the 'fund' is not the liability or obligation of the State of Arkansas. Provided, that this subsection (g) shall not be construed as relieving the fund of any liability or obligation prescribed in this Act upon the entry of a valid court order or valid final order of the Arkansas State Claims Commission establishing a judgment against any state agency, board, department or commission or where a settlement agreement has been reached arising from third party claims against any state

agency, board, department or commission where such state agency, board, department or commission is determined to be the owner or operator."

SECTION 5. Subsection (f) of Section 4 of Act 173 of 1989 is hereby amended to read as follows:

"(f) The environmental assurance fee shall be at a rate of two-tenths (2/10ths) of one cent for each gallon until the balance of the fund reaches fifteen million dollars (\$15,000,000) and shall drop at the beginning of the next calendar quarter to such rate as the commission determines is necessary to maintain a fifteen million dollar (\$15,000,000) balance. The rate shall be increased at the beginning of the next calendar quarter when the fund balance drops to twelve million dollars (\$12,000,000) or less and remain at the higher amount not to exceed two-tenths (2/10ths) of one cent until the fund balance reaches fifteen million dollars (\$15,000,000)."

SECTION 6. Subsection (g) of Section 4 of Act 173 is hereby amended to read as follows:

"(g) The commission shall review the fund balance at least quarterly and report the rate of collection for the environmental assurance fee for the upcoming quarter to the Director of the Department of Finance and Administration. The applicable fund balances shall be required to be maintained in perpetuity."

SECTION 7. Section 5 of Act 173 of 1989 is hereby amended to by adding a new subsection (c) to read as follows:

"(c) The Department shall have the authority to enter upon the property of any owner or operator of an above ground storage tank to obtain information, conduct surveys, or review records for the purpose of determining substantial compliance, as defined by this Act and regulations promulgated thereunder, with all State and federal laws and regulations relating to above ground storage tanks prior to Commission approval of a claim for reimbursement or disbursement."

SECTION 8. Subsection (a) of Section 7 of Act 173 of 1989 is hereby amended to read as follows:

"(a) No payment for corrective action shall be paid from the fund until the owner or operator has expended twenty-five thousand dollars (\$25,000) on corrective action for the occurrence except in cases where the Department is using its discretion under Section 3(e). It is the intent of the General Assembly that this initial level of expenditure be considered the equivalent of an insurance policy deductible. Owners or operators of underground storage tanks must demonstrate financial responsibility for the \$25,000 deductible for corrective actions."

SECTION 9. Subsection (c) of Section 7 of Act 173 of 1989 is hereby amended to read as follows:

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

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

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

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

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

SECTION 10. Subsection (a) of Section 8 of Act 173 of 1989 is hereby amended to read as follows:

"(a) No payment to any third party who brings a third party claim against any owner or operator for bodily injury or property damage, or both, shall be paid from the fund until the owner or operator has expended twenty-five thousand dollars (\$25,000) on third party claims for the calendar year during which the claim is filed with the fund except in cases where the Department is using its discretion under Section 3(e). It is the intent of the General Assembly that this initial level of expenditure be considered the equivalent of an annual aggregate insurance policy deductible. Owners and operators of underground storage tanks must demonstrate financial responsibility for the \$25,000 deductible for third party liability costs.

SECTION 11. Subsection (b) of Section 8 of Act 173 of 1989 is hereby amended to read as follows:

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

SECTION 12. Subsection (c) of Section 8 of Act 173 of 1989 is hereby amended to read as follows:

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

- (1) At the time of the occurrence, the owner or operator was in substantial compliance with the financial responsibility requirements;
- (2) At the time of discovery of the release, the owner or operator had paid all fees required under state law or regulations applicable to petroleum storage tanks; and
- (3) A valid final court order or valid final order of the Arkansas State Claims Commission establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from a qualified storage tank has been entered."

SECTION 13. Section 8 of Act 173 of 1989 is hereby amended by inserting an additional subsection at the end thereof to read as follows:

"(e) In the event monies are expended from the fund for third party claims and the owner or operator was not at the time of the occurrence in substantial compliance as defined by this Act and regulations promulgated hereunder, the Department may recover from the owner or operator the amount of monies expended from the fund for the third party claim by filing an action in the appropriate circuit court. Provided, that, this subsection (e) shall not be construed to abrogate or waive the provisions of Article 5, Section 20 of the Constitution of the State of Arkansas."

SECTION 14. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 15. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 16. Emergency. It is hereby found and determined by the General Assembly that underground storage tank insurance is not readily available to

cover the deductibles or upper-level third party damage claims; therefore, the relevant provisions must be changed, and this Act should be given effect immediately in order to relieve the burden as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: November 16, 1989
