

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**

# **A Bill**

**ACT 125 OF 1995**  
**HOUSE BILL 1076**

4 **By: Representatives Goodwin, Calhoun, Dietz, M. Wilson, von Gremp, Wallis, and Curran**

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## **For An Act To Be Entitled**

8 "AN ACT TO AMEND THE REMEDIAL ACTION TRUST FUND ACT TO  
9 PROVIDE FOR THE VOLUNTARY CLEANUP OF ABANDONED INDUSTRIAL  
10 SITES; FURTHER DEFINING THE CLEANUP RESPONSIBILITIES OF  
11 INNOCENT PROSPECTIVE PURCHASERS OF ABANDONED INDUSTRIAL  
12 SITES; AND FOR OTHER PURPOSES."

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## **Subtitle**

15 "TO PROVIDE FOR THE VOLUNTARY CLEANUP OF  
16 ABANDONED INDUSTRIAL SITES; FURTHER  
17 DEFINE CLEANUP RESPONSIBILITIES OF  
18 PROSPECTIVE PURCHASERS OF ABANDONED  
19 INDUSTRIAL 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. Declaration of Policy.

24 The General Assembly finds and declares as follow:

25 (1) The redevelopment of abandoned industrial sites should be  
26 encouraged as a sound land use management policy to prevent the needless  
27 development of prime farmland, open space and natural and recreation areas and  
28 to prevent urban sprawl;

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

32 (3) Persons interested in redeveloping abandoned industrial sites  
33 should have a method of determining what their legal liabilities and cleanup  
34 responsibilities will be as they plan the reuse of abandoned sites;

35 (4) Incentives should be put in place to encourage prospective  
36 purchasers to voluntarily develop and implement cleanup plans of abandoned

1 industrial sites without the use of taxpayer funds or the need for adversarial  
2 enforcement actions by the Arkansas Department of Pollution Control and  
3 Ecology;

4 (5) The Arkansas Department of Pollution Control and Ecology now  
5 routinely, through its permitting policies, determines when contamination will  
6 and will not pose unacceptable risks to public health or the environment and  
7 similar concepts are used in establishing cleanup policies for abandoned  
8 industrial sites;

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

12 (7) As an incentive to promote the redevelopment of abandoned  
13 industrial sites, persons not responsible for preexisting pollution at or  
14 contamination on industrial sites should meet alternative cleanup requirements  
15 if they acquire title after fully disclosing the nature of conditions at the  
16 site and declaring and committing to a specified future land use of the site.  
17

18 SECTION 2. Arkansas Code 8-7-503 is amended by inserting five  
19 additional subsections at the end thereof to read as follows:

20 "(13) Abandoned industrial site means a site on which one had an  
21 industrial activity and for which no responsible person can reasonably be  
22 pursued for a remedial response to clean up the site;

23 (14) Industrial activity means commercial, manufacturing or any other  
24 activity done to further either the development, manufacturing or distribution  
25 of goods and services, including, but not limited to, research and  
26 development, warehousing, shipping, transport, remanufacturing, repair and  
27 maintenance of commercial machinery and equipment;

28 (15) Property means real property and improvements, including:

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

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

33 (16) Prospective purchaser means a person who expresses a willingness  
34 to acquire an abandoned industrial site and is not responsible for any  
35 preexisting pollution at or contamination on the site;

1           (17) Site assessment means the site assessment submitted by a  
2 prospective purchaser to establish the baseline level of existing  
3 contamination on a site. The assessment shall, at a minimum, identify the  
4 location and extent of contamination, the quantity or level of contamination,  
5 the type of contamination, the probable source of contamination and the risk  
6 or threat associated with the contamination as described in section 8-7-523  
7 herein. The assessment shall also include a description of the use which the  
8 prospective purchaser intends to make of the site."

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10           SECTION 3. Arkansas Code 8-7-520(a) is amended to read as follows:

11           "(a) Any person who has undertaken or is undertaking remedial action at  
12 a hazardous substance site in response to an administrative or judicial order  
13 initiated against such person pursuant to § 8-7-508 or 8-7-523(d) may obtain  
14 contribution from any other person who is liable for such hazardous substance  
15 site."

16

17           SECTION 4. Subchapter 5 of Chapter 7 of Title 8 of the Arkansas Code is  
18 amended by inserting an additional section at the end thereof to read as  
19 follows:

20           "8-7-523.

21           (a) This subchapter applies to a person who:

22                   (1) is a prospective purchaser of an abandoned industrial site;

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

27                   (3) will reuse or redevelop the property for industrial  
28 activities to create employment expansion.

29           (b) The prospective purchaser who wishes to take advantage of the  
30 limitation of liability under this subchapter shall submit a proposed  
31 comprehensive site assessment to the Department for review and comment to  
32 establish the baseline of existing contamination on the site. If the  
33 prospective purchaser elects to proceed upon receipt of the Department\_s  
34 comments, the prospective purchaser shall perform the comprehensive site  
35 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) The Department and the prospective purchaser shall enter into a  
5 consent administrative order based on the results of the comprehensive site  
6 assessment. The consent administrative order shall establish cleanup  
7 liabilities and obligations for the abandoned industrial site. The prospective  
8 purchaser shall provide notice of the consent administrative order in a  
9 newspaper of general circulation that serves the area in which the abandoned  
10 industrial site is located. The notice shall be subject to the approval of  
11 the Department. The consent administrative order shall establish the intended  
12 use of the property that was preliminarily described in the comprehensive site  
13 assessment. The description of the intended use shall identify the site and  
14 the nature of the activity that the prospective purchaser proposes for the  
15 site.

16 (e) Once the prospective purchaser has acquired legal title to the  
17 abandoned industrial site, the purchaser will be responsible to remediate,  
18 remove and properly dispose of or manage, consistent with applicable  
19 requirements, any containerized wastes existing on site at the time of  
20 purchase, including drummed waste, lagoons and impoundments and wastes in  
21 aboveground and underground tanks. Wastes that are disposed of or managed on  
22 site will remain subject to applicable requirements.

23 (f) Once the prospective purchaser has acquired legal title to the  
24 abandoned industrial site, the purchaser will be responsible to take all  
25 necessary steps to prevent migration of hazardous substances beyond the  
26 property boundary.

27 (g) Once the prospective purchaser has acquired legal title to the  
28 abandoned industrial site, the purchaser shall be responsible to remedy any  
29 releases of hazardous substances.

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

32 (1) An unacceptable risk, either acute or chronic, to the health  
33 of employees or any other person likely to be exposed to the release at the  
34 site, based upon the intended site use described by the prospective buyer in  
35 its comprehensive site assessment and described by the consent administrative

1 order. A buyer may not use the property in a manner which differs from the  
2 intended use identified in the consent administrative order contemplated by  
3 subsection (d) above, unless the Department and buyer agree to a modification  
4 of the consent administrative order; or

5 (2) An unacceptable risk to degrade either groundwaters or  
6 surface waters, or any risk to degrade the extraordinary resource waters of  
7 the State of Arkansas.

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

11 (j) The selection of remedial action shall be approved by the  
12 Department after reasonable notice and after opportunity for hearing and shall  
13 become an amendment to the consent administrative order entered into pursuant  
14 to subsection (d) above.

15 (1) Selection of a remedial action shall include consideration of  
16 the following factors:

17 (A) The intended and allowable use of the abandoned  
18 industrial site;

19 (B) The ability of the contaminants to move in a form and  
20 manner which would result in exposure to humans and the surrounding  
21 environment at levels considered to be a significant health risk as described  
22 in subsection(h) (1) above;

23 (C) Consideration of the potential environmental risks of  
24 proposed alternative remedial action and its technical feasibility,  
25 reliability and cost effectiveness;

26 (D) When an imminent and substantial endangerment is posed;  
27 and

28 (E) Whether institutional or engineering controls eliminate  
29 or partially eliminate the imminent and substantial endangerment or otherwise  
30 contain or prevent migration.

31 (2) Remedial actions pursuant to subsection (g) above are not  
32 required to provide for the removal or remediation of the conditions or  
33 contaminants causing a release or threatened release on the abandoned  
34 industrial site if:

35 (A) Contaminants pose no unacceptable risk as described in

1 subsections (h)(1) and (2) or the remedial actions proposed in the assessment  
2 and intended uses of the industrial site will eliminate unacceptable risks as  
3 described in subsection (h)(1) and (2) above; or

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

7 (k) Nothing in this subchapter shall relieve the prospective purchaser  
8 after acquisition of legal title to the abandoned industrial site of any  
9 liability for contamination later caused by the purchaser.

10 (l) A prospective purchaser of an abandoned industrial site under this  
11 subchapter shall not be responsible for paying any fines or penalties levied  
12 against any person responsible for contamination on the abandoned industrial  
13 sites prior to the consent administrative order with the Department.

14 (m) This subchapter shall not relieve the purchaser of any liability  
15 under law for preexisting problems not identified in the comprehensive site  
16 assessment.

17 (n) Once the prospective purchaser has acquired legal title to the  
18 abandoned industrial site, the purchaser shall take all the steps necessary to  
19 prevent aggravating or contributing to the contamination of the air, land or  
20 water, including downward migration of contamination, from any existing  
21 contamination on the site. The purchaser shall not use or redevelop the site  
22 in any way which is likely to interfere with subsequent remedial actions or in  
23 a manner that differs from the intended use established in the consent  
24 administrative order described in subsection (d) above.

25 (o) A restriction shall be placed on the deed for the property covered  
26 by this subchapter which restricts the use of the property to industrial  
27 activities and compatible uses which will protect the integrity of any  
28 remedial action measures implemented on the property.

29 (p) The consent administrative order, including all rights and cleanup  
30 liabilities entered into by the Department and the prospective purchaser under  
31 subsection (d) above, is transferable with written notice to the Department in  
32 its entirety to any and all subsequent owners of the property who did not, by  
33 act or omission, cause or contribute to any release or threatened release of  
34 hazardous substances on the industrial site.

35 (q) Subsequent owners shall receive a copy of the consent

1 administrative order from the prospective purchaser and shall not use the site  
2 in a manner which is inconsistent with the intended use described in the  
3 consent administrative order authorized by subsection (d) above.

4 (r) Within thirty (30) days after the date the prospective purchaser  
5 acquires legal title to the abandoned industrial site, the purchaser shall  
6 file a notice of the consent administrative order with the clerk of the  
7 chancery court in the county in which the site is located. Notice of any  
8 subsequent amendments to the consent administrative order shall also be filed  
9 with the clerk of the chancery court within thirty (30) days after their  
10 effective dates. The clerk of the chancery court shall docket and record the  
11 notices so that they appear in the purchaser\_s chain of title."

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13 SECTION 5. All provisions of this act of a general and permanent nature  
14 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
15 Revision Commission shall incorporate the same in the Code.

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17 SECTION 6. If any provision of this act or the application thereof to  
18 any person or circumstance is held invalid, such invalidity shall not affect  
19 other provisions or applications of the act which can be given effect without  
20 the invalid provision or application, and to this end the provisions of this  
21 act are declared to be severable.

22 SECTION 7. All laws and parts of laws in conflict with this act are  
23 hereby repealed.

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25 APPROVED: 2-1-95

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