

**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.**

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001  
4

# A Bill

**Act 164 of 2001**  
SENATE BILL 139

5 By: Senators P. Malone, Trusty, Horn  
6 By: Representatives Gillespie, R. Smith, J. Elliott, Green, Cowling, Bennett, Dees  
7

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

10 TO AMEND THE ARKANSAS VOLUNTARY CLEANUP ACT TO CHANGE  
11 THE TERM OF THE AGREEMENT BETWEEN THE PROSPECTIVE  
12 PURCHASER AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY;  
13 AND FOR OTHER PURPOSES.  
14

## **Subtitle**

15 TO AMEND THE ARKANSAS VOLUNTARY CLEANUP  
16 ACT TO CHANGE THE TERM OF THE AGREEMENT  
17 BETWEEN THE PROSPECTIVE PURCHASER AND  
18 THE DEPARTMENT OF ENVIRONMENTAL QUALITY.  
19  
20  
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

24 SECTION 1. Arkansas Code 8-7-1101 is amended to read as follows:  
25 8-7-1101. Declaration of policy.

26 The General Assembly finds and declares as follows:

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

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

34 (3) Persons interested in redeveloping abandoned sites should have a  
35 method of determining what their legal liabilities and clean-up  
36 responsibilities will be as they plan the reuse of abandoned sites;

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

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

9 (6) Parties and persons responsible under law for pollution at  
 10 abandoned 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 clean-up  
 15 requirements if they acquire title after the nature of conditions at the site  
 16 have been disclosed and declare and commit to a specified future land use of  
 17 the subject site; and

18 (8) Property transactions at times necessitate title acquisition prior  
 19 to completion of the actions contemplated at 8-7-1104 (b)-(d) by persons not  
 20 previously involved with the site or otherwise considered a responsible party  
 21 for environmental conditions at a site. These persons should not be  
 22 foreclosed from participation under the procedures enacted hereunder.  
 23 Therefore, such parties, at the discretion of the director, may submit a  
 24 Letter of Intent that will set forth the party's desire to purchase the site  
 25 and retain their eligibility for participation in the Voluntary Cleanup  
 26 program established by this subchapter.

27  
 28 SECTION 2. Arkansas Code 8-7-1102 is amended to read as follows:

29 8-7-1102. Definitions.

30 (a)(1) "Abandoned site" means a site on which industrial, commercial, or  
 31 agricultural activity occurred and for which no responsible person can  
 32 reasonably be pursued for a remedial response to clean up the site or when the  
 33 Arkansas Department of Environmental Quality determines it is in the best  
 34 interest of the citizens of Arkansas to promote redevelopment under this  
 35 subchapter while continuing to pursue the responsible parties;

36 (2) "Implementing agreement" means a plan, order, memorandum of

1 agreement, or other enforceable document issued by the Arkansas Department of  
 2 Environmental Quality under provisions of the Arkansas Hazardous Waste  
 3 Management Act (beginning at § 8-7-201), or the Arkansas Remedial Action Trust  
 4 Fund Act (beginning at § 8-7-501) or the Arkansas Voluntary Cleanup Act  
 5 (beginning at § 8-7-1101) to implement the voluntary cleanup process described  
 6 at § 8-7-1104;

7 ~~(2)~~ (3) "Industrial, commercial, or agricultural activity" means  
 8 commercial, manufacturing, agricultural, or any other activity done to further  
 9 either the development, manufacturing, or distribution of goods and services  
 10 as well as soil cultivation, crop or livestock production, including, but not  
 11 limited to, research and development, warehousing, shipping, transport,  
 12 remanufacturing, repair, and maintenance of commercial machinery and  
 13 equipment;

14 ~~(3)~~ (4) "Property" means property and improvements, including:  
 15 (A) A facility as defined in the Comprehensive Environmental  
 16 Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(9); and  
 17 (B) A site as defined in the Arkansas Hazardous Waste  
 18 Management Act of 1979, § 8-7-203(11);

19 ~~(4)~~ (5) "Prospective purchaser" means a person who expresses a  
 20 willingness to acquire an abandoned site and is not responsible for any  
 21 preexisting pollution at or contamination on the site; and

22 ~~(5)~~ (6) (A) "Site assessment" means the site assessment to  
 23 establish the baseline level of existing contamination on a site.

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

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

30 (b) Any other terms of this subchapter not expressly defined shall have  
 31 the same definitions as provided in §§ 8-7-203, 8-7-304, 8-7-403, or 8-7-503,  
 32 unless manifestly inconsistent with the provisions and remedial intent of this  
 33 subchapter.

34  
 35 SECTION 3: Arkansas Code 8-7-1104 is amended to read as follows:  
 36 8-7-1104. Voluntary cleanup process.

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

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

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

8 (3) Will reuse or redevelop the property for industrial,  
9 commercial, or agricultural activities which will sustain or create employment  
10 opportunities or otherwise augment the local and/or state economy and tax  
11 base; or

12 (4) Is not a responsible party pursuant to § 8-7-512(a)(2)-(a)(4)  
13 and submits a Letter of Intent to Participate and subsequently acquires title  
14 to an abandoned site and prior to completion of an implementing agreement as  
15 set forth in subdivision (d) of this section.

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

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

22 (d)(1) The department and the prospective purchaser shall enter into a  
23 an consent administrative order implementing agreement based on the results of  
24 the comprehensive site assessment.

25 (2) The ~~consent administrative order~~ implementing agreement shall  
26 establish clean-up liabilities and obligations for the abandoned site.

27 (3) The prospective purchaser shall provide notice of the ~~consent~~  
28 ~~administrative order~~ implementing agreement in a newspaper of general  
29 circulation that serves the area in which the abandoned site is located.

30 (4) The notice shall be subject to the approval of the department.

31 (5) The ~~consent administrative order~~ implementing agreement shall  
32 establish the intended use of the property.

33 (6) The description of the intended use shall identify the site  
34 and the nature of the activity that the prospective purchaser proposes for the  
35 site.

36 (e) Once the prospective purchaser has acquired legal title to the

1 abandoned site, the purchaser will be responsible to remediate, remove and  
 2 properly dispose of or manage, consistent with applicable requirements, any  
 3 containerized hazardous substances existing on site at the time of purchase,  
 4 including drummed waste, lagoons, and impoundments and wastes in aboveground  
 5 and underground tanks which may pose a threat of release. Wastes that are  
 6 disposed or managed on site will remain subject to applicable requirements.

7 (f) Once the prospective purchaser has acquired legal title to the  
 8 abandoned site, the purchaser will be responsible to take all necessary steps  
 9 to prevent migration of hazardous substances beyond the property boundary as  
 10 appropriate, considering the factors specified at subsection (j) of this  
 11 section.

12 (g) Once the prospective purchaser has acquired legal title to the  
 13 abandoned site, the purchaser shall be responsible to remedy any releases of  
 14 hazardous substances as identified in the comprehensive site assessment  
 15 required by subsection (b) of this section.

16 (h) For purposes of subsection (g) of this section, releases of  
 17 hazardous substances are those conditions which pose either:

18 (1) An unacceptable risk, either acute or chronic, to the health  
 19 of employees or any other person likely to be exposed to the release from the  
 20 site, based upon the intended site use described by the prospective purchaser  
 21 in the comprehensive site assessment and described by the ~~consent~~  
 22 ~~administrative order~~ implementing agreement. A purchaser may not actually use  
 23 the property in a manner which differs from the intended use identified in the  
 24 ~~consent administrative order~~ implementing agreement contemplated by subsection  
 25 (d) of this section, unless the department and purchaser agree to a  
 26 modification of the ~~consent administrative order~~ implementing agreement; or

27 (2) An unacceptable risk to degrade either groundwaters or surface  
 28 waters or any risk to degrade the extraordinary resource waters of the State  
 29 of Arkansas.

30 (i) A remedial action pursuant to subsection (g) of this section shall  
 31 eliminate unacceptable risks and prevent degradation of groundwaters and  
 32 surface waters which would cause such unacceptable risk and/or degradation  
 33 described in subdivision (h)(2) of this section.

34 (j)(1) The selection of remedial action shall be approved by the  
 35 department after reasonable notice and after opportunity for hearing and shall  
 36 become an amendment to the ~~consent administrative order~~ implementing agreement

1 entered into pursuant to subsection (d) of this section.

2 (2) Selection of a remedial action shall include consideration of  
 3 the following factors:

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

5 (B) The ability of the contaminants to move in a form and  
 6 manner which would result in exposure to humans and the surrounding  
 7 environment at levels considered to be an unacceptable health risk as  
 8 described in subdivisions (h)(1) and (h)(2) of this section;

9 (C) Consideration of the potential environmental risks of  
 10 proposed alternative remedial action and its technical feasibility,  
 11 reliability, and cost effectiveness;

12 (D) When an imminent and substantial endangerment is posed;  
 13 and

14 (E) Whether institutional or engineering controls eliminate  
 15 or partially eliminate the imminent and substantial endangerment or otherwise  
 16 contain or prevent migration.

17 (3) Remedial actions pursuant to subsection (g) of this section  
 18 are not required to provide for the removal or remediation of the conditions  
 19 or contaminants causing a release or threatened release on the abandoned site  
 20 if:

21 (A) Contaminants pose no unacceptable risk as described in  
 22 subdivisions (h)(1) and (h)(2) of this section or the remedial actions  
 23 proposed in the assessment and intended uses of the abandoned site will  
 24 eliminate unacceptable risks as described in subdivisions (h)(1) and (h)(2) of  
 25 this section; or

26 (B) Activities required to allow the intended reuse or  
 27 redevelopment of the abandoned site are in a manner which will protect public  
 28 health and the environment as described in subdivisions (h)(1) and (h)(2) of  
 29 this section.

30 (k) Nothing in this section shall relieve the prospective purchaser  
 31 after acquisition of legal title to the abandoned site of any liability for  
 32 contamination later caused by the purchaser.

33 (l) A prospective purchaser of an abandoned site under this subchapter  
 34 shall not be responsible for paying any fines or penalties levied against any  
 35 person responsible for contamination on the abandoned site prior to the  
 36 ~~consent administrative order~~ implementing agreement with the department.

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

6 (2) The purchaser shall not use or redevelop the site in any way  
 7 which is likely to interfere with subsequent remedial actions or in a manner  
 8 that differs from the intended use established in the ~~consent administrative~~  
 9 ~~order~~ implementing agreement described in subsection (d) of this section.

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

14 (o) The ~~consent administrative order~~ implementing agreement, including  
 15 all rights and clean-up liabilities entered into by the department and the  
 16 prospective purchaser under subsection (d) of this section, is transferable  
 17 with written notice to the department in its entirety to any and all  
 18 subsequent owners of the property who did not, by act or omission, cause or  
 19 contribute to any release or threatened release of hazardous substances on the  
 20 abandoned site.

21 (p) Subsequent owners shall receive a copy of the ~~consent administrative~~  
 22 ~~order~~ implementing agreement from the prospective purchaser and shall not use  
 23 the site in a manner which is inconsistent with the intended use described in  
 24 the ~~consent administrative order~~ implementing agreement authorized by  
 25 subsection (d) of this section.

26 (q)(1) Within thirty (30) days of the date that the prospective  
 27 purchaser acquires legal title to the abandoned site, the purchaser shall file  
 28 a notice of the ~~consent administrative order~~ implementing agreement with the  
 29 clerk of the circuit court in the county in which the site is located.

30 (2) Notice of any subsequent amendments to the ~~consent~~  
 31 ~~administrative order~~ implementing agreement shall also be filed with the clerk  
 32 of the circuit court within thirty (30) days after their effective dates.

33 (3) The clerk of the circuit court shall docket and record the  
 34 notice so that it appears in the purchaser's chain of title.

35  
 36 APPROVED: 2/9/2001