

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 1824 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: S3/31/05

A Bill

SENATE BILL 1099

5 By: Senator Womack
6 By: Representatives Key, Ledbetter
7
8

9 **For An Act To Be Entitled**

10 AN ACT TO CLARIFY LIABILITY PROVISIONS OF THE
11 REMEDIAL ACTION TRUST FUND ACT; AND FOR OTHER
12 PURPOSES.
13

14 **Subtitle**

15 AN ACT TO CLARIFY LIABILITY PROVISIONS
16 OF THE REMEDIAL ACTION TRUST FUND ACT.
17
18

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

21 *SECTION 1. The purpose of this Act is to resolve questions that have*
22 *arisen regarding the phrase "at the time of disposal" in Arkansas Code § 8-7-*
23 *512(a)(3) and § 8-7-512(a)(4), as interpreted by the Arkansas Supreme Court*
24 *in Arkansas Department of Environmental Quality v. Brighton Corporation, et*
25 *al., 352 Ark. 396, 102 S.W. 3d 458 (2003), and to clarify that the Arkansas*
26 *Remedial Action Trust Fund Act is remedial in nature and should be applied*
27 *retroactively.*
28

29 *SECTION 2. Arkansas Code § 8-7-502, concerning the purposes of the*
30 *Remedial Action Trust Fund Act, is amended to add and additional subsection*
31 *to read as follows:*

32 *(d) The General Assembly expressly intends that the provisions of this*
33 *subchapter shall apply retroactively.*

34 *(e) A further purpose of this act is to provide the state with the*
35 *authority necessary to protect the public's health and safety and the*



1 environment from releases or threatened releases of hazardous substances; and
2 to provide emergency response capabilities necessary to promptly contain,
3 control, or remove hazardous substances resulting from spills or accidental
4 releases.

5
6 SECTION 3. Arkansas Code § 8-7-512 is amended to read as follows:

7 (a) Any of the following shall be liable to the state for all costs of
8 remedial or removal actions under this subchapter;

9 (1) The owner and operator of a facility;

10 (2) Any person who, at the time of disposal of any hazardous
11 substance, owned or operated a hazardous substance site;

12 (3) Any generator of hazardous substances who, ~~at the time of~~
13 ~~disposal,~~ caused such substance to be disposed of at a hazardous substance
14 site or who causes a release or threatened release of the hazardous
15 substances; or

16 (4) Any transporter of hazardous substances who causes a release
17 or threatened release of the hazardous substances or who, ~~at the time of~~
18 ~~disposal,~~ selected a hazardous substance site for disposal of the hazardous
19 substances.

20 (b)(1) No person shall be liable under this subchapter for damages as a result of actions
21 taken or omitted in the course of rendering care, assistance, or advice at the direction of the
22 Arkansas Department of Environmental Quality, with respect to an incident creating a danger to
23 public health or welfare or the environment as a result of any release of a hazardous substance
24 or the threat ~~thereof~~ of a release of a hazardous substance.

25 (2)(A) This subsection shall not preclude liability for damages
26 as a result of gross negligence or intentional misconduct on the part of the
27 person, nor shall this subsection preclude liability for damages and costs of
28 remedial or removal action of any person liable for such damages and costs
29 pursuant to subsection (a) of this section.

30 (B) For the purposes of subdivision (b)(2)(A) of this
31 section, reckless, willful, or wanton misconduct shall constitute gross
32 negligence.

33 (c)(1) A person taking ~~response~~ remedial or removal action under this subchapter as a
34 contractor for the department shall not be liable under this subchapter or under any other state
35 law to any person for injuries, costs, damages, expenses, or other liability, including, but not
36 limited to, claims for indemnification or contribution and claims by third parties for death,

1 personal injury, illness, loss of or damage to property, or economic loss resulting from a release
2 or threatened release of hazardous substances.

3 (2) However, the provisions of this subsection shall not apply in
4 case of a release that is caused by the conduct of the person taking ~~response~~
5 remedial or removal action which is negligent, grossly negligent, or which
6 constitutes intentional misconduct.

7 (d) A state employee or an employee of a political subdivision who provides services
8 relating to remedial or removal action while acting within the scope of his authority as a
9 governmental employee shall have the same exemption from liability, subject to the other
10 provisions of this section, as is provided to the ~~response~~ removal or remediation action
11 contractor under subsection (c) of this section.

12 (e)(1) Nothing in subsections (c) or (d) of this section shall affect the liability of any
13 person under warranty under state or common law.

14 (2) Nothing in this subsection shall affect the liability of an
15 employer taking ~~response~~ remedial or removal action to any employee of any
16 such employer under any provision of law, including any provision of any law
17 relating to workers' compensation.

18
19 SECTION 4. Arkansas Code Title 8, Chapter 7, Subchapter 4 is repealed:
20 ~~8-7-401. Title.~~

21 ~~This subchapter may be known and may be cited as the "Emergency Response Fund Act".~~

22
23 ~~8-7-402. Legislative Intent~~

24 ~~It is the intent of the General Assembly:~~

25 ~~(1) To provide the state with the authority necessary to protect~~
26 ~~the public's health and safety and the environment from releases or~~
27 ~~threatened releases of hazardous substances; and~~

28 ~~(2) To provide emergency response capabilities necessary to~~
29 ~~promptly contain, control, or remove hazardous substances resulting from~~
30 ~~spills or accidental releases.~~

31
32 ~~8-7-403. Definitions~~

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

34 ~~(1) "Commission" means the Arkansas Pollution Control and Ecology~~
35 ~~Commission;~~

36 ~~(2) "Department" means the Arkansas Department of Environmental~~

1 ~~Quality;~~

2 ~~(3) "Director" means the Director of the Arkansas Department of~~
3 ~~Environmental Quality;~~

4 ~~(4) "Federal act" means the Comprehensive Environmental~~
5 ~~Response, Compensation, and Liability Act of 1980, Pub. L. 96-510;~~

6 ~~(5) "Fund" means the Emergency Response Fund created by this~~
7 ~~subchapter;~~

8 ~~(6) "Hazardous substance" means:~~

9 ~~(A)(i) As of March 20, 1985, any substance designated~~
10 ~~pursuant to § 311(b)(2)(A) of the Federal Water Pollution Control Act, Pub.~~
11 ~~L. 92-500;~~

12 ~~(ii) Any element, compound mixture, solution, or~~
13 ~~substance designated pursuant to § 102 of Title I of the federal~~
14 ~~Comprehensive Environmental Response, Compensation, and Liability Act of~~
15 ~~1980, Pub. L. 96-510;~~

16 ~~(iii) Any hazardous waste, including polychlorinated~~
17 ~~biphenyls, as defined by the Arkansas Hazardous Waste Management Act of 1979,~~
18 ~~§ 8-7-201 et seq., and the regulations promulgated thereunder;~~

19 ~~(iv) Any toxic pollutant listed under § 307(a) of~~
20 ~~the Federal Water Pollution Control Act, Pub. L. 92-500;~~

21 ~~(v) Any hazardous air pollutant listed under § 112~~
22 ~~of the federal Clean Air Act, Pub. L. 95-95; and~~

23 ~~(vi) Any hazardous chemical substance or mixture~~
24 ~~regulated under § 7 of the federal Toxic Substances Control Act, Pub. L. 94-~~
25 ~~469; and~~

26 ~~(B) Any other substance or pollutant designated by~~
27 ~~regulations of the commission promulgated under this subchapter;~~

28 ~~(7) "Local government" means any city of the first class, any~~
29 ~~city of the second class, or any incorporated town or any county government~~
30 ~~of the State of Arkansas;~~

31 ~~(8) "Person" means any individual, corporation, company, firm,~~
32 ~~partnership, association, trust, joint stock company or trust, venture, state~~
33 ~~or federal government or agency, or any other legal entity, however~~
34 ~~organized;~~

35 ~~(9) "Releases of hazardous substances" means any spilling,~~
36 ~~leaking, pouring, emitting, emptying, discharging, injecting, escaping,~~

~~leaching, dumping, or disposing of hazardous substances into the environment;~~
~~(10) "Response action" means action necessary to effect permanent control, prevention, treatment, or containment of releases and threatened releases, including the removal of hazardous substances from the environment where such removal is necessary to protect the public health or safety. These actions are intended to include investigations designed to determine the need for and scope of remedial action and such planning, legal, fiscal, economic, engineering, geological, technical, or architectural studies as are necessary to plan and direct remedial actions, to recover the cost thereof, and to enforce the provisions of this subchapter;~~

~~(11) "Threatened release" means any situation where a sudden release of hazardous substances can be reasonably expected unless prevented by a change of operation or the installation or construction of containment or treatment devices or by removal or other response action; and~~

~~(12) "Treatment", "storage", "disposal", "generation", and "hazardous waste" shall have the meanings provided in § 8-7-203 and the regulations promulgated pursuant to the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.~~

~~(b)(1) As used in §§ 8-7-413-8-7-415, unless the context otherwise requires, "responsible party" means:~~

~~(A) The owner or operator of a facility or site at which hazardous substances have been disposed of and from which releases or threatened releases of hazardous substances occur;~~

~~(B) Any person who, at the time of disposal of a hazardous substance, owned or operated a facility or site from which releases or threatened releases of hazardous substances occur;~~

~~(C) Any generator of hazardous substances who causes a release or threatened release of hazardous substances or who, at the time of disposal, caused the substance to be disposed of at a facility or site from which releases or threatened releases of hazardous substances occur; or~~

~~(D) Any transporter of hazardous substances who causes a release or threatened release of such hazardous substances or who, at the time of disposal, selected the facility or site of disposal from which releases or threatened releases of the substances occur.~~

~~(2) "Responsible party" does not include:~~

~~(A) A person who merely provides financing or loans to a~~

1 ~~responsible party;~~

2 ~~(B) A person who obtains title to property through~~
3 ~~foreclosure or through the conveyance of property in total or partial~~
4 ~~satisfaction of a mortgage or other security interest in property.~~

5
6 ~~8-7-404. Penalties.~~

7 ~~(a)(1) Any person who commits any unlawful act under this subchapter shall be guilty of~~
8 ~~a misdemeanor and upon conviction shall be subject to imprisonment for not more than one (1)~~
9 ~~year or to a fine of not more than ten thousand dollars (\$10,000), or to both a fine and~~
10 ~~imprisonment.~~

11 ~~(2) Each day or part of a day during which the violation is~~
12 ~~continued or repeated shall constitute a separate offense.~~

13 ~~(b) Any person who violates any provision of this subchapter or commits any unlawful~~
14 ~~act under this subchapter shall be subject to a civil penalty in such amount as the Director of the~~
15 ~~Arkansas Department of Environmental Quality shall find appropriate, not to exceed twenty five~~
16 ~~thousand dollars (\$25,000) per day of the violation, subject to the payment of any expenses~~
17 ~~reasonably incurred by the state in removing, correcting, or terminating any adverse effects~~
18 ~~resulting therefrom, including the cost of the investigation, inspection, or survey establishing~~
19 ~~such violation or unlawful act and subject to the payment to the state of reasonable~~
20 ~~compensation of any actual damage resulting therefrom.~~

21
22 ~~8-7-405. Unlawful acts.~~

23 ~~It shall be unlawful for any person:~~

24 ~~(1) To violate any provision of this subchapter or any rule or~~
25 ~~regulation adopted under this subchapter;~~

26 ~~(2) To knowingly make a false statement, representation, or~~
27 ~~certification in any report or other document filed or required by this~~
28 ~~subchapter or the rules and regulations adopted pursuant thereto;~~

29 ~~(3) To violate any order issued by the Arkansas Department of~~
30 ~~Environmental Quality under this subchapter or any provision of such orders;~~
31 ~~or~~

32 ~~(4) To fail to implement response actions in accordance with~~
33 ~~representations made by persons liable for a release or threatened release to~~
34 ~~the department as to their willingness and ability to appropriately respond~~
35 ~~to the release or threatened release for the purposes of § 8-7-408 (c).~~

36

1 ~~8-7-406. Regulations—Administrative procedure.~~

2 ~~The Arkansas Pollution Control and Ecology Commission shall adopt regulations under~~
3 ~~this subchapter necessary to implement or effectuate the purposes and intent of this subchapter,~~
4 ~~including, but not limited to, regulations affording any persons aggrieved by any order issued~~
5 ~~pursuant to this subchapter an opportunity for a hearing thereon, and commission review of the~~
6 ~~action.~~

7
8 ~~Each department, agency, or instrumentality of the executive, legislative, and judicial~~
9 ~~branches of the federal government and the state government shall be subject to and comply~~
10 ~~with this subchapter in the same manner and to the same extent, both procedurally and~~
11 ~~substantively, as any nongovernmental entity, including liability under §§ 8-7-413—8-7-416 and~~
12 ~~8-7-418.~~

13
14 ~~8-7-408. Response authority of directory generally—Permits.~~

15 ~~(a) The Director of the Arkansas Department of Environmental Quality is authorized to~~
16 ~~initiate and implement response actions under this subchapter whenever there is a release or a~~
17 ~~threatened release of hazardous substances which may present an imminent and substantial~~
18 ~~endangerment to the public health, safety, or welfare or to the environment.~~

19 ~~(b) Whenever the director has reason to believe that a release or threatened release of~~
20 ~~hazardous substances may present an imminent and substantial endangerment to the public~~
21 ~~health, safety, or welfare or to the environment, the director and the employees and the~~
22 ~~authorized representatives of the Arkansas Department of Environmental Quality shall have the~~
23 ~~right to enter upon any affected private or public property for the purpose of collecting~~
24 ~~information and for initiating and implementing appropriate response actions.~~

25 ~~(c) Response actions are not authorized when the director has reasonable assurance that~~
26 ~~the person responsible for a release or threatened release has committed to and is capable of~~
27 ~~initiating corrective and remedial action in a timely manner and that the actions will achieve~~
28 ~~results equivalent to the results from response action authorized in this section.~~

29 ~~(d) The department or any contractor of the department under this section, in taking~~
30 ~~response action pursuant to this subchapter, shall not be required to obtain any state or local~~
31 ~~permit for the portion of any response or remedial action conducted pursuant to this subchapter~~
32 ~~entirely on site, where the remedial action is otherwise carried out in compliance with the~~
33 ~~regulations of the department.~~

34
35 ~~8-7-409. Orders of director—Responsibility of lenders.~~

36 ~~(a) Upon finding that a release or a threatened release of hazardous substances may~~

1 ~~present an imminent and substantial endangerment to the public health, safety, or welfare or to~~
2 ~~the environment, the Director of the Arkansas Department of Environmental Quality may,~~
3 ~~without notice or hearing, issue an order reciting the existence of such an imminent hazard and~~
4 ~~substantial endangerment and requiring that such action be taken as he determines necessary to~~
5 ~~protect the health and safety of any affected or threatened persons or the environment and to~~
6 ~~otherwise meet the emergency.~~

7 ~~(b) The order of the director may include, but is not limited to, requiring any person~~
8 ~~responsible in whole or in part for the release or threatened release or any person in total or~~
9 ~~partial control of the site, facility, or transport vehicle from which the release or threatened~~
10 ~~release emanates, if that person has caused or contributed to the release or threatened release,~~
11 ~~to take such steps as are necessary to protect the public health and safety and the environment.~~

12 ~~(c) A person shall not be deemed responsible for or to have caused or contributed to the~~
13 ~~release or threatened release of hazardous substances if such person merely provides financing~~
14 ~~or loans to another person or obtains title to property through foreclosure or through conveyance~~
15 ~~of property in total or partial satisfaction of a mortgage or other security interest in property.~~

16 ~~(d) The orders may be issued verbally or in writing. If originally issued verbally, a written~~
17 ~~order will be issued by the director confirming the verbal order as soon as reasonably possible to~~
18 ~~do so.~~

19 ~~(e) Any person to whom the order is directed shall comply therewith immediately but,~~
20 ~~upon written application to the director, shall be afforded a hearing and administrative review of~~
21 ~~the order within ten (10) days of making the application.~~

22
23 ~~§ 7-410. Emergency Response Fund.~~

24 ~~(a) There is created the Emergency Response Fund.~~

25 ~~(b)(1) There is authorized to be deposited in the Emergency Response Fund all moneys~~
26 ~~recovered pursuant to § 8-4-417, any moneys received by the state as a gift or donation to the~~
27 ~~fund, all interest earned upon moneys deposited in the fund, and all moneys received as~~
28 ~~penalties pursuant to the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., the~~
29 ~~Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., the Arkansas Solid~~
30 ~~Waste Management Act, § 8-6-201 et seq., the Lead-Based Paint Hazard Act, § 8-4401 et seq.,~~
31 ~~and the Removal of Asbestos Material Act, § 20-27-1001 et seq.~~

32 ~~(2) However, in the event the total amount in the Emergency~~
33 ~~Response Fund equals or exceeds one hundred fifty thousand dollars~~
34 ~~(\$150,000), any additional moneys collected pursuant to this section shall be~~
35 ~~deposited in the Hazardous Substance Remedial Action Trust Fund.~~

36 ~~(c) The Emergency Response Fund as created by this section shall be administered by~~

1 ~~the Director of the Arkansas Department of Environmental Quality who shall authorize~~
2 ~~expenditures from the fund for the following purposes:~~

3 ~~(1) The purchase of any commodities or services necessary in~~
4 ~~taking response actions in connection with a release or a threatened release~~
5 ~~of hazardous substances; and~~

6 ~~(2) For reimbursement of all costs incurred by the Arkansas~~
7 ~~Department of Environmental Quality in taking response actions in connection~~
8 ~~with a release or a threatened release of hazardous substances.~~

9
10 ~~8-7-411. Limitations upon expenditures.~~

11 ~~(a) An expenditure authorized under this subchapter shall be limited to those situations~~
12 ~~where spill control and countermeasures plans or contingency plans which are required by state~~
13 ~~or federal statutes or regulations do not apply or where the resources obligated under the plans~~
14 ~~prove insufficient to contain, control, or remove hazardous substances to the extent required to~~
15 ~~protect the public's health and safety.~~

16 ~~(b) The Director of the Arkansas Department of Environmental Quality is not authorized~~
17 ~~to expend in excess of sixty thousand dollars (\$60,000) on any single response action without~~
18 ~~Arkansas Pollution Control and Ecology Commission approval.~~

19
20 ~~8-7-412. Furnishing of information.~~

21 ~~(a)(1) For the purpose of assisting in determining the need for response actions in~~
22 ~~connection with a release or threat of release of hazardous substances under this subchapter or~~
23 ~~for enforcing the provisions of this subchapter, any person who stores, treats, or disposes of~~
24 ~~hazardous substances, or, if necessary, to ascertain facts not available at the site or facility~~
25 ~~where such hazardous substances are stored, treated, or disposed of, any person who generates,~~
26 ~~transports, or otherwise handles or has handled hazardous substances shall, upon request of any~~
27 ~~officer or employee of the Arkansas Department of Environmental Quality, furnish information~~
28 ~~relating to the substance and permit that person at all reasonable times to have access to and to~~
29 ~~copy all records relating to the substances and to inspect and obtain samples of any of the~~
30 ~~substances or other materials.~~

31 ~~(2) However, any information which would constitute a trade secret~~
32 ~~under the Arkansas Trade Secrets Act, § 4-75-601 et seq., obtained by the~~
33 ~~department or its employees in the administration of this subchapter, except~~
34 ~~emission data, shall be kept confidential.~~

35 ~~(b) Any violation of this section shall be unlawful and constitute a misdemeanor.~~
36

1 ~~8-7-413. Liability of responsible parties.~~

2 ~~(a) Responsible parties shall be liable to the state for all costs and expenditures of~~
3 ~~response actions incurred by the state and shall be liable to local governments for all costs and~~
4 ~~expenditures of response actions incurred by local governments.~~

5 ~~(b)(1) No person shall be liable under this section for damages as a result of actions~~
6 ~~taken or committed at the direction of the Arkansas Department of Environmental Quality in the~~
7 ~~course of rendering care, assistance, or advice with respect to an incident creating a danger to~~
8 ~~public health or welfare or the environment as a result of any release of a hazardous substance~~
9 ~~or the threat thereof.~~

10 ~~(2) This subsection shall not preclude liability for damages as~~
11 ~~the result of gross negligence or intentional misconduct on the part of the~~
12 ~~person. For the purposes of the preceding sentence, reckless, willful, or~~
13 ~~wanton misconduct shall constitute gross negligence.~~

14
15 ~~8-7-414. Apportionment of costs and expenditures.~~

16 ~~(a)(1) Any party found liable for any costs or expenditures recoverable under §§ 8-7-~~
17 ~~413, 8-7-415, 8-7-416, and 8-7-418 which establishes by a preponderance of the evidence that~~
18 ~~only a portion of such costs or expenditures are attributable to his or her actions shall be~~
19 ~~required to pay only for that portion.~~

20 ~~(2) If the trier of fact finds the evidence insufficient to~~
21 ~~establish each party's portion of costs or expenditures, the court shall~~
22 ~~apportion the costs or expenditures, to the extent practicable, according to~~
23 ~~equitable principles, among the responsible parties.~~

24 ~~(b)(1) In any action under this section, no responsible party shall be liable for more than~~
25 ~~that party's apportioned share of the amount expended for such response action.~~

26 ~~(2) The apportioned share shall be based on a responsible party's~~
27 ~~portion of the total volume of the hazardous substance at the site in~~
28 ~~question at the time of action taken under this subchapter.~~

29 ~~(3) Any expenditures required by the provisions of this~~
30 ~~subchapter made by a responsible party, before or after suit, shall be~~
31 ~~credited toward any apportioned share.~~

32
33 ~~8-7-415. Recovery of expenditures generally.~~

34 ~~(a) Making use of any and all appropriate existing state legal remedies, the Arkansas~~
35 ~~Department of Environmental Quality or the Attorney General shall act to recover the amount~~
36 ~~expended by the state for any and all response actions from any and all identified responsible~~

1 ~~parties for each facility or site.~~

2 ~~(b) All moneys recovered from responsible parties for expenditures from the fund shall be~~
3 ~~deposited in the Emergency Response Fund.~~

4
5 ~~8-7-416. Recovery of expenditures-Limitations.~~

6 ~~(a) No person, including the state, may recover under the authority of this section, §§ 8-~~
7 ~~7-413-8-7-415, and 8-7-418 for any response costs or damages resulting from the application,~~
8 ~~in accordance with label directions, of a pesticide product registered under the Federal~~
9 ~~Insecticide, Fungicide, and Rodenticide Act.~~

10 ~~(b) No person, including the state, may recover under the authority of this section for any~~
11 ~~response costs or damages resulting solely from an act or omission of a third party or from an~~
12 ~~act of God or an act of war.~~

13
14 ~~8-7-417. Liens for expenditures and value of improvements.~~

15 ~~(a) In the case that the owner of real property that is the location of a release or~~
16 ~~threatened release upon which response activities are performed under this subchapter is~~
17 ~~responsible in whole or in part for causing the release or threatened release, there shall exist a~~
18 ~~lien against such property for the moneys expended by the state, including, but not limited to,~~
19 ~~expenditures from the Emergency Response Fund. If the expenditure results in an increase in the~~
20 ~~value of the property, the lien shall also be for the increase in value.~~

21 ~~(b) The lien shall be effective upon the filing of a notice of lien by the state or by the~~
22 ~~state agency which made the expenditure. This notice shall be filed with the circuit clerk in the~~
23 ~~county in which the land is located.~~

24 ~~(c) The lien obtained by this section shall not exceed the amount of expenditures, as~~
25 ~~itemized on an affidavit of expenditures attached to and filed with the notice of lien, and the~~
26 ~~increase in property value as a result of the response action taken, as determined by an~~
27 ~~independent appraisal. A copy of the appraisal shall also be attached to and filed with the notice~~
28 ~~of lien.~~

29 ~~(d) The notice of lien shall be filed within thirty (30) days of the date of the last act~~
30 ~~performed on such property by the Arkansas Department of Environmental Quality or other~~
31 ~~affected state agency or its agent under this subchapter.~~

32 ~~(e) Upon filing of the notice of lien, a copy with attachments shall be served upon the~~
33 ~~property owner in the manner provided for enforcement of mechanics' or materialmen's liens.~~

34 ~~(f) Any and all moneys recovered by or reimbursed to the department pursuant to this~~
35 ~~section through voluntary agreements or court orders shall be deposited and credited to the~~
36 ~~account of the Emergency Response Fund.~~

1 ~~8-7-418. Punitive damages.~~

2 ~~If any person who is liable for a release or threatened release of a hazardous substance~~
3 ~~fails, without sufficient cause, to implement response action in accordance with representations~~
4 ~~made by the person to the Arkansas Department of Environmental Quality for the purposes of §~~
5 ~~8-7-408 (c) or fails to properly provide response action upon order of the department, the~~
6 ~~person may be liable to the state for punitive damages in an amount equal to three (3) times the~~
7 ~~amount of any costs incurred by the state as a result of the failure to take proper action.~~

8
9 ~~8-7-419. Appeals.~~

10 ~~An appeal may be taken from any final order of the Arkansas Department of~~
11 ~~Environmental Quality issued under this subchapter as provided in §§ 8-4-205, 8-4-212-8-4-~~
12 ~~214, and 8-4-218-8-4-229, and in accordance with regulations promulgated by the Arkansas~~
13 ~~Pollution Control and Ecology Commission under this subchapter.~~

14
15 ~~8-7-420. Liability for injuries, etc. — Exceptions.~~

16 ~~(a) A person taking response action under this subchapter as a contractor for the~~
17 ~~Arkansas Department of Environmental Quality shall not be liable under this subchapter or under~~
18 ~~any other state law to any person for injuries, costs, damages, expenses, or other liability,~~
19 ~~including, but not limited to, claims for indemnification or contribution and claims by third parties~~
20 ~~for death, personal injury, illness, loss of or damage to property, or economic loss resulting from~~
21 ~~a release or threatened release of hazardous substances.~~

22 ~~(b) However, the provisions of subsection (a) of this section shall not apply in case of a~~
23 ~~release that is caused by the conduct of the person taking response action which is negligent,~~
24 ~~grossly negligent, or which constitutes intentional misconduct.~~

25 ~~(c) A state employee or an employee of a political subdivision who provides services~~
26 ~~relating to response action while acting within the scope of his authority as a governmental~~
27 ~~employee shall have the same exemption from liability subject to the other provisions of this~~
28 ~~section as is provided to the contractor under subsections (a) and (b) of this section.~~

29 ~~(d)(1) Nothing in subsections (a)-(c) of this section shall affect the liability of any person~~
30 ~~under warranty under state or common law.~~

31 ~~(2) Nothing in this subsection shall affect the liability of an~~
32 ~~employer taking response action to any employee of any such employer under~~
33 ~~any provision of law, including any provision of any law relating to workers'~~
34 ~~compensation.~~

35
36 ~~8-7-421. Recycling transactions.~~

1 ~~(a) The purposes of this section are:~~

2 ~~(1) To promote the reuse and recycling of scrap material in~~
3 ~~Arkansas while protecting human health and the environment;~~

4 ~~(2) To promote the goals of the Arkansas Pollution Prevention~~
5 ~~Act, § 8-10-201 et seq., and related Arkansas legislation intended to~~
6 ~~encourage recycling;~~

7 ~~(3) To create greater equity in the statutory treatment of~~
8 ~~recycled versus virgin materials;~~

9 ~~(4) To remove the disincentives and impediments to recycling in~~
10 ~~Arkansas created as an unintended consequence of certain liability provisions~~
11 ~~contained in this subchapter; and~~

12 ~~(5) To incorporate into this subchapter amendments to the federal~~
13 ~~Comprehensive Environmental Response Compensation and Liability Act adopted~~
14 ~~by the United States Congress in 1999 in Pub. L. 106-113, thus ensuring that~~
15 ~~Arkansas law does not contain more stringent provisions than federal law.~~

16 ~~(b)(1) For purposes of subsections (c)–(f) of this section, a person who arranged for~~
17 ~~recycling of recyclable material shall not be a "responsible party" under § 8-7-403~~

18 ~~(b)(1)(C) or (D) with respect to the recyclable materials.~~

19 ~~(2) Nothing in this section shall be deemed to affect the~~
20 ~~liability of a person under § 8-7-403 (b)(1)(C) or (D) with respect to~~
21 ~~materials that are not recyclable materials as defined in subsection (c) of~~
22 ~~this section.~~

23 ~~(e)(1) As used in this section, "recyclable material" means scrap paper, scrap plastic,~~
24 ~~scrap glass, scrap textiles, scrap rubber other than whole tires, scrap metal, or spent lead-acid,~~
25 ~~spent nickel-cadmium, and other spent batteries, as well as minor amounts of material incident~~
26 ~~to, or adhering to, the scrap material as a result of its normal and customary use prior to~~
27 ~~becoming scrap.~~

28 ~~(2) However, "recyclable material" does not include:~~

29 ~~(A) Shipping containers of a capacity from thirty liters~~
30 ~~(30 l) to three thousand liters (3,000 l), whether intact or not, having any~~
31 ~~hazardous substance, but not metal bits and pieces or hazardous substances~~
32 ~~that form an integral part of the container, contained on, or adhering~~
33 ~~thereto; or~~

34 ~~(B) Any item of material that contains polychlorinated~~
35 ~~biphenyls at a concentration in excess of fifty (50) parts per million or any~~
36 ~~new standard promulgated pursuant to applicable federal laws.~~

1 ~~(d) Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap~~
2 ~~rubber other than whole tires shall be deemed to be arranging for recycling of recyclable~~
3 ~~materials, if the person who arranged for the transaction by selling recyclable material or~~
4 ~~otherwise arranging for the recycling of recyclable material can demonstrate by a preponderance~~
5 ~~of the evidence that all of the following criteria were met at the time of the transaction:~~

6 ~~(1) The recyclable material met a commercial specification grade;~~

7 ~~(2) A market existed for the recyclable material;~~

8 ~~(3) A substantial portion of the recyclable material was made~~
9 ~~available for use as feedstock for the manufacture of a salable new product;~~

10 ~~(4) The recyclable material could have been a replacement or~~
11 ~~substitute for a virgin raw material, or the product to be made from the~~
12 ~~recyclable material could have been a replacement or substitute for a product~~
13 ~~made, in whole or in part, from virgin raw material;~~

14 ~~(5) For transactions occurring ninety (90) days or more after~~
15 ~~August 13, 2001, the person exercised reasonable care to determine that the~~
16 ~~facility where the recyclable material was handled, processed, reclaimed, or~~
17 ~~otherwise managed by another person, i.e., a consuming facility, was in~~
18 ~~compliance with substantive, not procedural or administrative, provisions of~~
19 ~~any federal, state, or local environmental law or regulation or compliance~~
20 ~~order or decree issued pursuant thereto, applicable to the handling,~~
21 ~~processing, reclamation, storage, or other management activities associated~~
22 ~~with recyclable material; and~~

23 ~~(6) For purposes of this subsection, "reasonable care" shall be~~
24 ~~determined using criteria that include:~~

25 ~~(A) The price paid in the recycling transaction;~~

26 ~~(B) The ability of the person to detect the nature of the~~
27 ~~consuming facility's operations concerning its handling, processing,~~
28 ~~reclamation, or other management activities associated with recyclable~~
29 ~~material; and~~

30 ~~(C)(i) The result of inquiries made to the appropriate~~
31 ~~federal, state, or local environmental agency regarding the consuming~~
32 ~~facility's past and current compliance with substantive, not procedural or~~
33 ~~administrative, provisions of any federal, state, or local environmental law~~
34 ~~or regulation or compliance order or decree issued pursuant thereto,~~
35 ~~applicable to the handling, processing, reclamation, storage, or other~~
36 ~~management activities associated with the recyclable material.~~

1 ~~(ii) For the purposes of this subsection, a~~
2 ~~requirement to obtain a permit applicable to the handling, processing,~~
3 ~~reclamation, or other management activity associated with the recyclable~~
4 ~~materials shall be deemed to be a substantive provision.~~

5 ~~(e)(1) Transactions involving scrap metal shall be deemed to be arranging for recycling,~~
6 ~~if the person who arranged for the transaction by selling recyclable material or otherwise~~
7 ~~arranging for the recycling of recyclable material can demonstrate by a preponderance of the~~
8 ~~evidence that at the time of the transaction the person:~~

9 ~~(A) Met the criteria set forth in subsection (d) of this~~
10 ~~section with respect to the scrap metal;~~

11 ~~(B) Was in compliance with any applicable regulations or~~
12 ~~standards regarding the storage, transport, management, or other activities~~
13 ~~associated with the recycling of scrap metal that the Arkansas Pollution~~
14 ~~Control and Ecology Commission promulgates subsequent to the enactment of~~
15 ~~this section and with regard to transactions occurring after the effective~~
16 ~~date of those regulations or standards; and~~

17 ~~(C) Did not melt the scrap metal prior to the transaction.~~

18 ~~(2) For purposes of subdivision (e)(1)(C) of this section,~~
19 ~~melting of scrap metal does not include the thermal separation of two (2) or~~
20 ~~more materials due to differences in their melting points, referred to as~~
21 ~~"sweating".~~

22 ~~(3) Except for scrap metals that the federal Environmental~~
23 ~~Protection Agency or the commission excludes from this definition by~~
24 ~~regulation, for purposes of this subsection, the term "scrap metal" means:~~

25 ~~(A) Bits and pieces of metal parts, such as bars, turnings,~~
26 ~~rods, sheets, or wire; or~~

27 ~~(B) Metal pieces that may be combined together with bolts~~
28 ~~or soldering, such as radiators, scrap automobiles, or railroad box cars,~~
29 ~~which when worn or superfluous can be recycled.~~

30 ~~(f) Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries, or~~
31 ~~other spent batteries shall be deemed to be arranging for recycling, if the person who arranged~~
32 ~~for the transaction by selling recyclable material or otherwise arranging for the recycling of~~
33 ~~recyclable material can demonstrate by a preponderance of the evidence that at the time of the~~
34 ~~transaction:~~

35 ~~(1) The person:~~

36 ~~(A) Met the criteria set forth in subsection (d) of this~~

1 ~~section with respect to the spent lead-acid batteries, spent nickel-cadmium~~
2 ~~batteries, or other spent batteries, but did not recover the valuable~~
3 ~~components of those batteries; and~~

4 ~~(B) With respect to transactions involving lead-acid~~
5 ~~batteries, was in compliance with applicable federal and Arkansas~~
6 ~~environmental regulations or standards, and any amendments thereto, regarding~~
7 ~~the storage, transport, management, or other activities associated with the~~
8 ~~recycling of spent lead-acid batteries;~~

9 ~~(2) With respect to transactions involving nickel-cadmium~~
10 ~~batteries, federal and Arkansas environmental regulations or standards were~~
11 ~~in effect regarding the storage, transport, management, or other activities~~
12 ~~associated with the recycling of spent nickel-cadmium batteries, and the~~
13 ~~person was in compliance with applicable regulations or standards or any~~
14 ~~amendments thereto; or~~

15 ~~(3) With respect to transactions involving other spent batteries,~~
16 ~~federal and Arkansas environmental regulations or standards were in effect~~
17 ~~regarding the storage, transport, management, or other activities associated~~
18 ~~with the recycling of those batteries, and the person was in compliance with~~
19 ~~applicable regulations or standards or any amendments thereto.~~

20 ~~(g)(1) The exemptions set forth in subsections (d)–(f) of this section shall not apply if~~
21 ~~the person:~~

22 ~~(A) Had an objectively reasonable basis to believe at the~~
23 ~~time of the recycling transaction:~~

24 ~~(i) That the recyclable material would not be~~
25 ~~recycled;~~

26 ~~(ii) That the recyclable material would be burned as~~
27 ~~fuel or for energy recovery or incineration; or~~

28 ~~(iii) For transactions occurring more than ninety~~
29 ~~(90) days after August 13, 2001, that the consuming facility was not in~~
30 ~~compliance with a substantive, not procedural or administrative, provision of~~
31 ~~any federal, Arkansas, or local environmental law or regulation or compliance~~
32 ~~order or decree issued pursuant thereto, applicable to the handling,~~
33 ~~processing, reclamation, or other management activities associated with the~~
34 ~~recyclable material;~~

35 ~~(B) Had reason to believe that hazardous substances had~~
36 ~~been added to the recyclable material for purposes other than processing for~~

1 ~~recycling; or~~

2 ~~(C) Failed to exercise reasonable care with respect to the~~
3 ~~management and handling of the recyclable material, including adhering to~~
4 ~~customary industry practices current at the time of the recycling transaction~~
5 ~~designed to minimize, through source control, contamination of the recyclable~~
6 ~~material by hazardous substances.~~

7 ~~(2) For purposes of this subsection, an objectively reasonable~~
8 ~~basis for belief shall be determined using criteria that include:~~

9 ~~(A) The size of the person's business;~~

10 ~~(B) Customary industry practices, including customary~~
11 ~~industry practices current at the time of the recycling transaction designed~~
12 ~~to minimize, through source control, contamination of the recyclable material~~
13 ~~by hazardous substances;~~

14 ~~(C) The price paid in the recycling transaction; and~~

15 ~~(D) The ability of the person to detect the nature of the~~
16 ~~consuming facility's operations concerning its handling, processing,~~
17 ~~reclamation, or other management activities associated with the recyclable~~
18 ~~material.~~

19 ~~(3) For purposes of this subsection, a requirement to obtain a~~
20 ~~permit applicable to the handling, processing, reclamation, or other~~
21 ~~management activities associated with recyclable material shall be deemed to~~
22 ~~be a substantive provision.~~

23 ~~(h) Nothing in this section shall be deemed to affect the liability of a person under § 8-7-~~
24 ~~403(b)(1)(A) or (B).~~

25 ~~(i) The commission is authorized to promulgate additional regulations concerning this~~
26 ~~section.~~

27 ~~(j) The exemptions provided in this section shall not affect any concluded judicial or~~
28 ~~administrative action or any pending judicial action initiated by the State of Arkansas before~~
29 ~~enactment of this section.~~

30 ~~(k)(1) Any person who commences an action in contribution against a person who is not~~
31 ~~liable by operation of this section shall be liable to that person for all reasonable costs of~~
32 ~~defending that action, including all reasonable attorney's and expert witness fees.~~

33 ~~(2) For the purpose of this subsection, the term "person" shall~~
34 ~~not include an agency, board, commission, or department of the State of~~
35 ~~Arkansas.~~

36 ~~(l) Nothing in this section shall affect:~~

1 ~~(1) Liability under any other federal, Arkansas, or local statute~~
2 ~~or regulation promulgated pursuant to any such statute, including any~~
3 ~~requirements promulgated by the commission under the Arkansas Hazardous Waste~~
4 ~~Management Act of 1979, § 8-7-201 et seq.; or~~

5 ~~(2) The ability of the commission to promulgate regulations under~~
6 ~~any other statute, including the Arkansas Hazardous Waste Management Act of~~
7 ~~1979, § 8-7-201 et seq.~~

8 ~~(m) Nothing in this section shall be construed to:~~

9 ~~(1) Affect any defenses or liabilities of any person to whom~~
10 ~~subdivision (b)(1) of this section does not apply; or~~

11 ~~(2) Create any presumption of liability against any person to~~
12 ~~whom subdivision (b)(1) of this section does not apply.~~

13
14 SECTION 5. Arkansas Code § 8-4-103(f)(2), concerning the penalties
15 collected for violations of the Arkansas Water and Air Pollution Control Act,
16 is amended to read as follows:

17 (2) All moneys collected as civil penalties shall be deposited in the
18 ~~Emergency Response Fund~~ Hazardous Substance Remedial Action Trust Fund as
19 provided by ~~§ 8-7-410~~ § 8-7-509.

20
21 SECTION 6. Arkansas Code § 8-6-204(e)(2), concerning the penalties
22 collected for violations of the Arkansas Solid Waste Management Act is
23 amended to read as follows:

24 (2) All moneys collected as civil penalties pursuant to this section
25 shall be deposited in the ~~Emergency Response Fund~~ Hazardous Substance
26 Remedial Action Trust Fund as provided by ~~§ 8-7-410~~ § 8-7-509.

27
28 SECTION 7. Arkansas Code § 8-7-204(e)(2), concerning the penalties
29 collected for violations of the Arkansas Hazardous Waste Management Act of
30 1979, is amended to read as follows:

31 (2) All moneys collected as civil penalties pursuant to this section
32 shall be deposited in the ~~Emergency Response Fund~~ Hazardous Substance
33 Remedial Action Trust Fund as provided by ~~§ 8-7-410~~ § 8-7-509.

34
35 SECTION 8. Arkansas Code § 8-7-503 is amended to read as follows:
36 8-7-503. Definitions.

1 As used in this subchapter, unless the context otherwise requires:

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

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

6 (3) "Director" means the Director of the Arkansas Department of
7 Environmental Quality;

8 (4) "Federal act" means the Comprehensive Environmental Response,
9 Compensation, and Liability Act of 1980, Pub. L. 96-510;

10 (5) "Fund" means the Hazardous Substance Remedial Action Trust
11 Fund created by this subchapter;

12 (6) "Hazardous substance" means:

13 (A)(i) As of March 21, 1985, any substance designated
14 pursuant to § 311(b)(2)(A) of the Federal Water Pollution Control Act, Pub.
15 L. 92-500;

16 (ii) Any element, compound, mixture, solution, or
17 substance designated pursuant to § 102 of Title I of the federal
18 Comprehensive Environmental Response, Compensation, and Liability Act of
19 1980, Pub. L. 96-510;

20 (iii) Any hazardous waste, including polychlorinated
21 biphenyls, as defined by the Arkansas Hazardous Waste Management Act of
22 1979, 8-7-201 et seq., and the regulations promulgated thereunder;

23 (iv) Any toxic pollutant listed under § 307(a) of the
24 Federal Water Pollution Control Act; (v) Any hazardous air pollutant listed
25 under § 112 of the federal Clean Air Act; and

26 (vi) Any hazardous chemical substance or mixture
27 regulated under § 7 of the federal Toxic Substances Control Act; and

28 (B) Any other substance or pollutant designated by
29 regulations of the commission promulgated under this subchapter;

30 (7) "Hazardous substance sites" means any sites or facilities
31 where hazardous substances have been disposed of or from which there is a
32 release or threatened release of hazardous substances;

33 (8) "Person" means any individual, corporation, company, firm,
34 partnership, association, trust, joint-stock company or trust, venture, state
35 or federal government or agency, or any other legal entity, however
36 organized;

1 (9) "Releases of hazardous substances" means, for the purpose of
2 this subchapter, any spilling, leaking, pouring, emitting, emptying,
3 discharging, injecting, escaping, leaching, dumping, or disposing of
4 hazardous substances into the environment;

5 (10) "Remedial action" means action necessary to effect permanent
6 control, abatement, prevention, treatment, or containment of releases and
7 threatened releases, including the removal of hazardous substances from the
8 environment where removal is necessary to protect public health and the
9 environment. Such actions are intended to include investigations designed to
10 determine the need for and scope of remedial action and such planning, legal,
11 fiscal, economic, engineering, geological, technical, or architectural
12 studies as necessary to plan and direct remedial actions, to recover the cost
13 thereof, and to enforce the provisions of this subchapter;

14 (11) "Threatened release" means, for the purpose of this
15 subchapter, any situation where a sudden or nonsudden release of hazardous
16 substances can be reasonably expected, unless prevented by change of
17 operation or installation or construction of containment or treatment devices
18 or by removal or other remedial action; ~~and~~

19 (12) "Treatment", "storage", "disposal", "generation", and
20 "hazardous waste" shall have the meaning provided in § 3 of the Arkansas
21 Hazardous Waste Management Act of 1979, § 8-7-201 et seq., and the
22 regulations promulgated pursuant to that subchapter; ~~and~~

23 (13) "Removal action" means:

24 (A) The necessary cleanup or removal of a released
25 hazardous substance from the environment;

26 (B) Necessary actions taken in the event of a threatened release of a
27 hazardous substance into the environment;

28 (C) Actions necessary to monitor, test, analyze, and evaluate a release or
29 threatened release of a hazardous substance;

30 (D) Disposal or processing of removed material; or

31 (E) Other actions necessary to prevent, minimize, or mitigate damage to
32 the public health or welfare or the environment that may otherwise result from a release or
33 threatened release.

34
35 SECTION 9. Arkansas Code § 8-7-508 is amended to read as follows:
36 8-7-508. Remedial and removal authority of the department.

1 (a)(1) Upon finding that a hazardous substance site exists or may exist, the Arkansas
2 Department of Environmental Quality may, upon reasonable notice and after opportunity for
3 hearing, issue an order to any person liable for the site under § 8-7-512 , if that person has
4 caused or contributed to the release or threatened release of hazardous substances at the site.
5 This order shall require that such remedial actions be taken as are necessary to investigate,
6 control, prevent, abate, treat, or contain any releases or threatened releases of hazardous
7 substances from the site.

8 ~~(2) A person shall not be deemed to have caused or contributed to~~
9 ~~the release or threatened release of hazardous substances if such person~~
10 ~~merely provides financing or loans to another person or obtains title to~~
11 ~~property through foreclosure or through conveyance of property in total or~~
12 ~~partial satisfaction of a mortgage or other security interest in property.~~

13 ~~(3)~~(2) The fact that such a site is or is not listed by the
14 Arkansas Pollution Control and Ecology Commission pursuant to § 8 -7-509 (e)
15 shall in no manner limit the authority of the department under this
16 subchapter.

17 (b) The Director of the Arkansas Department of Environmental Quality or any employee
18 or authorized agent of the department may enter upon any private or public property for the
19 purpose of collecting information under this subchapter and for initiating and implementing
20 remedial actions.

21 (c) The director is authorized to initiate and implement remedial actions under this
22 subchapter pursuant to the provisions of § 8-7-509.

23 (d) The department or any contractor of the department under this section, in taking
24 removal or remedial actions pursuant to this subchapter, shall not be required to obtain any
25 state or local permit for the portion of any ~~response~~ removal or remedial action conducted
26 pursuant to this subchapter entirely on site, where the removal or remedial action is otherwise
27 carried out in compliance with the regulations of the department.

28 (e) The director is authorized to initiate and implement removal actions under this
29 subchapter whenever there is a release or a threatened release of hazardous substances which
30 may present an imminent and substantial endangerment to the public health, safety, or welfare
31 or to the environment.

32 (f) Whenever the director has reason to believe that a release or threatened release of
33 hazardous substances may present an imminent and substantial endangerment to the public
34 health, safety, or welfare or to the environment, the director and the employees and the
35 authorized representatives of the Arkansas Department of Environmental Quality shall have the
36 right to enter upon any affected private or public property for the purpose of collecting

1 information and for initiating and implementing appropriate removal or remedial actions.

2 (g) Removal actions are not authorized when the director has reasonable assurance that
3 the person liable for a release or threatened release has committed to and is capable of initiating
4 corrective and removal action in a timely manner and that the actions will achieve results
5 equivalent to the results from removal action authorized in this section..

6 (h) Upon finding that a release or a threatened release of hazardous substances may
7 present an imminent and substantial endangerment to the public health, safety, or welfare or to
8 the environment, the director may, without notice or hearing, issue an order reciting the
9 existence of such an imminent hazard and substantial endangerment and requiring that such
10 removal actions be taken as he or she determines necessary to protect the health and safety of
11 any affected or threatened persons or the environment and to otherwise meet the emergency.

12 (i) The order of the director issued under subsection (h) may include, but is not limited
13 to, requiring any person responsible in whole or in part for the release or threatened release or
14 any person in total or partial control of the site, facility, or transport vehicle from which the
15 release or threatened release emanates, if that person has caused or contributed to the release
16 or threatened release, to take such steps as are necessary to protect the public health and safety
17 and the environment.

18 (j) The Director of the Arkansas Department of Environmental Quality is
19 not authorized to expend in excess of two hundred fifty thousand dollars
20 (\$250,000) on any single removal action without Arkansas Pollution Control
21 and Ecology Commission approval.

22 (k)(1) The orders issued under subsection (h) may be issued verbally or in writing.

23 (2) If originally issued verbally, a written order shall be issued by the director
24 confirming the verbal order as soon as reasonably possible to do so.

25 (l) Any person to whom an order issued under subsection (h) is directed shall comply
26 with the order immediately but, upon written request to the commission within ten (10) days of
27 the order being issued by the director, shall be afforded a hearing and administrative review of
28 the order within ten (10) days after filing the written request.

29 (m) A person shall not be deemed to be liable for, responsible for, or
30 to have caused or contributed to the release or threatened release of
31 hazardous substances pursuant to any provision of this subchapter if the
32 person merely provides financing or loans to another person or obtains title
33 to property through foreclosure or through conveyance of property in total or
34 partial satisfaction of a mortgage or other security interest in property.

35
36 SECTION 10. Arkansas Code § 8-7-509 is amended to read as follows:

1 8-7-509. Hazardous Substance Remedial Action Trust Fund.

2 (a) The Hazardous Substance Remedial Action Trust Fund is created.

3 (b) The Hazardous Substance Remedial Action Trust Fund will be administered by the
4 Director of the Arkansas Department of Environmental Quality, who shall authorize expenditures
5 from the Hazardous Substance Remedial Action Trust Fund.

6 (c)(1) Any moneys remaining in the Emergency Response Fund as of June 30, 2005,
7 shall be transferred in their entirety to the Hazardous Substance Remedial Action Trust Fund.

8 (2) Beginning July 1, 2005, the Hazardous Substance Remedial Action Trust Fund
9 shall consist of all moneys received as penalties under §§ 8-4-101 -- 8-4-106, 8-
10 4-201 -- 8-4-229, 8-4-301 -- 8-4-313, 8-4-401 -- 8-4-409, 8-6-201 -- 8-6-214,
11 8-7-201 -- 8-7-226, 8-7-504, and 20-27-1001 -- 20-27-1007.

12 (3) In addition to all moneys appropriated by the General Assembly to the
13 Hazardous Substance Remedial Action Trust Fund, there shall be deposited in the Hazardous
14 Substance Remedial Action Trust Fund any moneys received by the state as a gift or donation to
15 the Hazardous Substance Remedial Action Trust Fund and all interest earned upon money
16 deposited in the Hazardous Substance Remedial Action Trust Fund, all fees assessed under § 8-
17 7-518, all costs recovered from the Emergency Response Fund, all punitive damages collected
18 pursuant to §8-7-517, and any other moneys legally designated for the Hazardous Substance
19 Remedial Action Trust Fund.

20 ~~(2)(4) In addition, there is authorized to be deposited in the~~
21 ~~Hazardous Substance Remedial Action Trust Fund all moneys recovered pursuant~~
22 ~~to § 8-7-514 and all moneys received as penalties pursuant to § 8-7-504~~
23 ~~except for that portion of the civil penalties specified in § 8-7-504 (e) to~~
24 ~~be deposited in the Remedial Action Account of the Construction Assistance~~
25 ~~Revolving Loan Fund established pursuant to § 15-5-901.~~

26 (d) Ten percent (10%) of the moneys collected for the Hazardous Substance Remedial
27 Action Trust Fund after July 1, 1991, shall be deposited in the Environmental Education Fund.
28 Total deposit of funds shall not exceed two hundred seventy-five thousand dollars (\$275,000)
29 per fiscal year. The remaining moneys in the Hazardous Substance Remedial Action Trust Fund
30 may be expended by the director solely for the purposes pursuant to provisions of subsection (e)
31 of this section as authorized by this subsection (d) and subsection (e) of this section:

32 (1) The costs and expenses reasonably necessary for the
33 administration of this subchapter by the Arkansas Department of Environmental
34 Quality;

35 (2) The state share mandated by § 104(c)(3) of the federal act,
36 42 U.S.C. § 9604 (c)(3); and

1 (3) To provide for the investigation, identification,
2 containment, abatement, treatment, or control, including monitoring and
3 maintenance, of hazardous substance sites within the state. The director may
4 enter into the contracts and use the funds for those purposes directly
5 associated with identification, investigation, containment, abatement,
6 treatment, or control, including monitoring and maintenance, prescribed
7 above, including:

8 (A) Hiring of personnel;

9 (B) Purchase, lease, or rental of equipment; and

10 Other necessary expenses related to the operation and implementation of this
11 subchapter.

12 (e) The moneys in the Hazardous Substance Remedial Action Trust Fund may be
13 expended by the director for removal actions, including:

14 (1) The purchase of any commodities or services necessary in
15 taking removal actions in connection with a release or threatened release;
16 and

17 (2) Reimbursement of all costs incurred by the Arkansas
18 Department of Environmental Quality in taking removal actions in connection
19 with a release or threatened release.

20 ~~(e)(1)(f)(1)~~ No expenditures from the Hazardous Substance Remedial Action Trust Fund,
21 as authorized by subdivisions (d)(2) and (d)(3) of this section, shall be made prior to the
22 approval by the Arkansas Pollution Control and Ecology Commission of a prioritized listing of
23 hazardous substance sites at which remedial actions are authorized through the use of
24 Hazardous Substance Remedial Action Trust Fund moneys. This listing shall be revised annually
25 by the department and submitted to the commission for approval after public notice and
26 opportunity for hearing.

27 (2) Upon a showing that a release of a hazardous substance at a
28 site exists and will continue without expeditious remedial action, the
29 commission may list the site on the prioritized listing pursuant to the
30 procedures set out in § 8-4-202(e) prior to public notice and thereby
31 authorize the director to expend funds pursuant to subdivision (d)(3) of this
32 section. Such an emergency listing need not be supported by a factual showing
33 of irreparable harm or imminent and substantial endangerment.

34 ~~(f)(1)(g)(1)~~ Notwithstanding the provisions of §§ 19-6-108 and §19-6-601, grants to the
35 state under the federal Resource Conservation and Recovery Act and the federal Comprehensive
36 Environmental Response, Compensation and Liability Act, as each may be amended from time to

1 time, and otherwise from the federal Environmental Protection Agency received by the Treasurer
 2 of State from the federal government are declared to be cash funds restricted in their use and
 3 dedicated and are to be used solely as authorized in this subchapter and ~~§§ 15-5-901-15-5-906~~
 4 §§ 15-5-1501 -- 15-5-1511.

5 (2) The cash funds, when received by the Treasurer of State, shall
 6 not be deposited or deemed to be a part of the State Treasury for the
 7 purposes of Arkansas Constitution, Article 5 § 29, Arkansas Constitution,
 8 Article 16 § 12, Arkansas Constitution, Amendment 20, or any other
 9 constitutional or statutory provisions.

10 (3) The Treasurer of State shall pay the cash funds to the
 11 Arkansas Development Finance Authority for deposit in the ~~Remedial Action~~
 12 ~~Account of the Construction Assistance~~ Brownfield Revolving Loan Fund
 13 established pursuant to ~~§ 15-5-901~~ § 15-5-1501, et seq. to be used for the
 14 purposes authorized by this subchapter and ~~§§ 15-5-901-15-5-906~~ §§ 15-5-1501
 15 -- 15-5-1511.

16 (4) Such federal grants transferred directly to the Arkansas
 17 Development Finance Authority are declared to be cash funds restricted in
 18 their use and dedicated and to be used solely as authorized in this
 19 subchapter and ~~§§ 15-5-901-15-5-906~~ §§ 15-5-1501 -- 15-5-1511.

20
 21 SECTION 11. Arkansas Code § 8-7-514 is amended to read as follows:

22 8-7-514. Recovery of expenditures generally.

23 (a) After an expenditure from the Hazardous Substance Remedial Action Trust Fund for a
 24 removal or remedial action, the Arkansas Department of Environmental Quality shall institute
 25 action to recover the expenditure from the person or persons liable for causing the hazardous
 26 substance release, including taking any appropriate legal action.

27 b) Making use of any and all appropriate existing state legal remedies, the department or the
 28 Attorney General shall act to recover the amount expended by the state for any and all ~~response~~
 29 remedial or removal actions from any and all parties identified as responsible parties for each
 30 hazardous substance.

31 (c) All moneys recovered from responsible parties pursuant to this section shall be
 32 deposited in the fund.

33
 34 SECTION 12. Arkansas Code § 8-7-515 is amended to read as follows:

35 8-7-515. Recovery of expenditures-limitations.

36 (a) No person, including the state, may recover under the authority of this section for

1 any remedial or removal action costs or damages resulting from the application, in accordance
2 with label directions of a pesticide product registered under the Federal Insecticide, Fungicide,
3 and Rodenticide Act.

4 (b) No person, including the state, may recover under the authority of this section for any
5 remedial or removal action costs or damages resulting solely from an act or omission of a third
6 party or from an act of God or an act of war.

7
8 **SECTION 13.** Arkansas Code § 8-7-516 is amended to read as follows:

9 8-7-516. Liens for expenditures and value of improvements.

10 (a) If the owner of real property that is the location of a hazardous substance site upon
11 which remedial or removal activity is performed under this subchapter is responsible, in whole
12 or in part, for causing the hazardous substance release, there shall exist a lien against the
13 property for the moneys expended. If the expenditure results in an increase in the value of the
14 property, the lien shall also be for the increase in value.

15 (b) The lien shall be effective upon the filing by the Director of the Arkansas Department
16 of Environmental Quality of a notice of lien with the circuit clerk in the county in which the land is
17 located.

18 (c) The lien obtained by this section shall not exceed the amount of expenditures, as
19 itemized on an affidavit of expenditures attached to and filed with the notice of lien, and the
20 increase in property value as a result of the removal, remedial, or abatement action taken, as
21 determined by an independent appraisal, a copy of which shall be attached to and filed with the
22 notice of lien.

23 (d) The notice of lien shall be filed within thirty (30) days of the date of the last act
24 performed on the property by the Arkansas Department of Environmental Quality or its agent
25 under this subchapter.

26 (e) Upon filing of the notice of lien, a copy with attachments shall be served upon the
27 property owner in the manner provided for enforcement of mechanics' or materialmen's liens.

28 (f) Any and all moneys recovered or reimbursed pursuant to this section through
29 voluntary agreements or court orders shall be deposited and credited to the account of the
30 ~~appropriate trust fund~~ Hazardous Substance Remedial Action Trust Fund.

31
32 **SECTION 14.** Arkansas Code § 8-7-517 is amended to read as follows:

33 8-7-517. Punitive damages.

34 If any person who is liable for a release or threat of release of a hazardous substance
35 fails without sufficient cause to properly provide remedial or removal action upon order of the
36 Arkansas Department of Environmental Quality, the person may be liable to the state for punitive

1 damages in an amount equal to three (3) times the amount of any costs incurred by the state as
2 a result of the failure to take proper action.

3
4 SECTION 15. Arkansas Code § 8-7-519 is amended to read as follows:

5 8-7-519. Appeals

6 An appeal may be taken from any final order of the Arkansas Department
7 of Environmental Quality under this subchapter as provided in §§ 8-4-202, 8-
8 4-210, 8-4-212--8-4-214, 8-4-218, 8-4-219, 8-4-221 ~~8-4-222~~ ~~8-4-229~~ and in
9 accordance with regulations promulgated by the Arkansas Pollution Control and
10 Ecology Commission under this subchapter.

11
12 SECTION 16. Arkansas Code § 8-7-521 is amended to read as follows:

13 8-7-521. Site Access for remedial or removal action.

14 (a) For purposes of responding to an administrative or judicial order or settlement
15 entered pursuant to § 8-7-508, the owner or the operator of a facility which is a hazardous
16 substance site, or any person who otherwise controls access to such facility, shall provide access
17 to the Arkansas Department of Environmental Quality, any employee of the department, or any
18 other person, duly designated by the Director of the Arkansas Department of Environmental
19 Quality, who undertakes such activities as are required to carry out the terms of the said order
20 or settlement.

21 (b) Any person who impedes or interferes with a person who is entitled to site access for
22 the purpose of conducting remedial or removal action at a hazardous substance site pursuant to
23 the terms of an administrative or judicial order or settlement may be assessed a civil penalty by
24 the department in an administrative proceeding or by the court in a judicial proceeding for a site
25 access injunction of up to ten thousand dollars (\$10,000) per day that site access is impeded.

26 (c) Any person who knowingly impedes or interferes with a person who is entitled to site
27 access for the purpose of conducting remedial or removal action at a hazardous substance site
28 pursuant to the terms of an administrative or judicial order or settlement shall be guilty of a
29 misdemeanor, punishable by a fine of up to one thousand dollars (\$1,000) or imprisonment for
30 up to one (1) year, or both.

31
32 SECTION 17. Title 8, Chapter 7, Subchapter 5 is amended to add a new
33 subsection to read as follows:

34 8-7-1325. Appropriation.

35 On or after July 1, 2005, any appropriation made payable from the
36 Emergency Response Fund shall be made payable from the Hazardous Substance

1 Remedial Action Trust Fund.

2
3 SECTION 18. Arkansas Code § 19-5-929 is repealed:

4 ~~19-5-929. Emergency Response Fund.~~

5 ~~(a) There is established on the books of the Treasurer of State, the~~
6 ~~Auditor of State, and the Chief Fiscal Officer of the State a trust fund to~~
7 ~~be known as the Emergency Response Fund.~~

8 ~~(b) This fund shall consist of all moneys received as penalties~~
9 ~~pursuant to §§ 8-4-101—8-4-106, 8-4-201—8-4-229, 8-4-301—8-4-313, 8-4-~~
10 ~~401—8-4-409, 8-6-201—8-6-214, 8-7-201—8-7-226, as may be provided by~~
11 ~~law, there to be administered by the Director of the Arkansas Department of~~
12 ~~Environmental Quality for those purposes as may be provided by law.~~

13
14 SECTION 19. Arkansas Code § 20-27-1002(b), concerning penalties
15 collected for violations of the Removal of Asbestos Material Act, is amended
16 to read as follows:

17 (b) All moneys collected as civil penalties shall be deposited in the
18 ~~Emergency Response Fund~~ Hazardous Substance Remedial Action Trust Fund as
19 provided by ~~§ 8-7-410(b)(1)~~ § 8-7-509.

20
21 SECTION 20. Emergency Clause. The General Assembly of the State of
22 Arkansas hereby finds and determines that the decision of the Arkansas
23 Supreme Court in Arkansas Department of Environmental Quality v. Brighton
24 Corp. 352 Ark. 396, 102 S.W.3d 458 (2003), has raised questions regarding the
25 factual proof required to establish a claim for cost recovery under the
26 Arkansas Remedial Action Trust Fund Act and regarding the retroactivity of
27 the statute. The General Assembly further finds and determines that the
28 doubts raised by the decision in the Brighton case have created substantial
29 uncertainty regarding the enforcement authority of the Arkansas Department of
30 Environmental Quality and the rights and responsibilities of private parties
31 under the Arkansas Remedial Action Trust Fund Act, all of which require
32 urgent resolution. Therefore, an emergency is declared to exist; and this
33 act being immediately necessary for the preservation of the public peace,
34 health, and safety shall become effective on July 1, 2005, and shall apply
35 retroactively.

36

1

/s/ Womac

APPROVED: 4/06/2005k