

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

HOUSE BILL

1151

By: Representative Lipton

For An Act To Be Entitled

"AN ACT TO ESTABLISH THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY AS THE IMPLEMENTING AGENCY FOR THE REGULATED SUBSTANCE STORAGE TANK PROGRAM, TO REQUIRE ANNUAL REGISTRATION OF CERTAIN STORAGE TANKS, TO PERMIT LICENSURE OF INSTALLERS; AND FOR OTHER PURPOSES."

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

SECTION 1. Definitions and Exceptions. As used in this Act, unless the context otherwise requires:

(1) "Above ground storage tank" means any one or a combination of containers, vessels, and enclosures located above ground, including structure and appurtenances connected to them, whose capacity is greater than one thousand three hundred twenty (1320) gallons and not more than thirty thousand (30,000) gallons and that is used to contain or dispense motor fuels, distillate special fuels, or other refined petroleum products. Such term does not include mobile storage tanks used to transport petroleum from one location to another or those used in the production of petroleum or natural gas.

(2) The term "Department" means the Arkansas Department of Pollution Control and Ecology.

(3) The term "operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

(4) The term "owner" means:

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

(B) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such

tank immediately before the discontinuation of its use.

The term "owner" does not include any person who, without participation in the management of an underground storage tank, holds indicia of ownership primarily to protect a security interest in the tank. The term owner shall apply only to the owner of the tank and may be a different person than the person holding fee simple title to the real property on which the tank is located.

(5) The term "person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States Government.

(6) The term "petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(7) The term "regulated substance" means:

(A) any substance defined in section 101(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 USCS §9601 (14)) (but not including any substance regulated as a hazardous waste under subtitle C (42 USCS §§6921 et seq.)), and

(B) petroleum.

(8) The term "release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils. This term does not include releases that are permitted or authorized by the department or by federal law.

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

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

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

- (C) septic tank,
- (D) pipeline facility (including gathering lines regulated under:
  - (i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.) (49 USCS Appx. §§1671 et seq.),
  - (ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.),
- (E) surface impoundment, pit, pond, or lagoon,
- (F) storm water or waste water collection system,
- (G) flow-through process tank,
- (H) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or
- (I) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" shall not include any pipes connected to any tank which is described in subparagraphs (A) through (I).

SECTION 2. The department shall have the following powers and duties:

- (1) To adopt, after notice and public hearing, and to promulgate, modify, repeal, and enforce rules and regulations relating to an underground storage tank release detection, prevention, corrective action and financial responsibility program as required by the federal Resource Conservation and Recovery Act of 1976 as amended;
- (2) To administer and enforce all laws, rules, and regulations relating to an underground storage tank release detection, prevention, corrective action program, and financial responsibility including the use of any and all appropriate legal remedies to recover costs and collect fines under this act;
- (3) To advise, consult, cooperate, and enter agreements with appropriate federal, state, interstate, and local units of government and with affected groups and industries in the formulation of plans and in implementation of a program pursuant to this act;
- (4) To accept and administer loans and grants from the federal government and from such other sources as may be available to the department for the planning, implementation and enforcement of an underground storage tank release detection, prevention, corrective action program and financial responsibility;

(5) To examine and license individuals for the installation and testing of underground storage tanks;

(6) To set reasonable fees for licensure of individuals and annual registration of underground storage tanks and above ground storage tanks by rule and regulation. The annual registration fee shall not exceed thirty-five (\$35.00) per tank with ten dollars (\$10.00) per tank to be deposited in the Petroleum Storage Tank Trust Fund.

(7) To enter upon any public or private property for the purpose of obtaining information, conducting surveys or investigations, or taking corrective action and may copy or require submission of books, papers, records, memoranda, or data pertaining to the management of underground storage tanks.

(8) To enter into a cooperative agreement with the U.S. Environmental Protection Agency to carry out corrective actions and enforcement activities, including use of funds provided from the federal Leaking Underground Storage Tank Trust Fund.

(9) To take such other action as necessary and appropriate to carry out the purposes of this act and meet the requirements of federal law.

SECTION 3. Any regulations promulgated under this act shall as much as possible be identical to and no more stringent than the federal regulations adopted by the U. S. Environmental Protection Agency.

SECTION 4. The procedure of the department for issuance of rules and regulations, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions and related matters shall be as provided in Arkansas Code 8-4-101 - 8-4-106, 8-4-201 - 8-4-229, including but not limited to 8-4-205, 8-4-210, 8-4-212 - 8-4-214, 8-4-218 - 8-4-229 if they are not in conflict with the provisions of this chapter.

SECTION 5. Beginning July 1, 1990, it shall be unlawful for an individual to certify the installation or testing of an underground storage tank unless the individual has been duly licensed by the department.

SECTION 6. (a) Any person who violates any provision of this act, or

any regulation issued pursuant to this act, may be assessed a civil penalty not to exceed \$10,000. If the violation concerns the operation of an underground storage tank, the penalty shall not exceed \$10,000 for each tank for each day of violation.

(b) All civil penalties collected under this subsection shall be deposited in the Refined Petroleum Storage Tank Program Fund.

SECTION 7. (a) Upon a determination that a release of a regulated substance from an underground storage tank has occurred, the owner or operator shall notify the department. The owner or operator shall immediately undertake to collect and remove the release and to restore the area affected in accordance with the requirement of this Act.

(b) (1) If the owner or operator fails to proceed as required in (a), the owner and operator shall be liable to the department for any costs incurred by the department for undertaking corrective action or enforcement action with respect to the release of a regulated substance from an underground storage tank.

(2) Any party found liable for any costs or expenditures recoverable under this act which establishes by a preponderance of the evidence that only a portion of such costs or expenditures are attributable to his or her actions shall be required to pay only for that portion.

(3) If the trier of facts finds the evidence insufficient to establish each party's portion of costs or expenditures, the court shall apportion the costs or expenditures, to the extent practicable, according to equitable principles, among the responsible parties.

(4) In any action under this act, no responsible party shall be liable for more than that party's apportioned share of the amount expended by the department for the site.

(5) Any expenditures required by the provisions of this act made by a responsible party, before or after suit, shall be credited toward any apportioned share.

(c) Any costs recovered by the department under this subsection shall be used to reimburse the Petroleum Storage Tank Trust Fund in the amount utilized by the department and the balance, if any, deposited into the Regulated Storage Tank Program Fund.

SECTION 8. There is hereby established on the books of the State Treasurer, State Auditor and Chief Fiscal Officer of the State a fund to be known as the Regulated Substance Storage Tank Program Fund. Such fund shall consist of federal funds, any necessary state matching funds as may be provided by the General Assembly, licensure fees, annual registration fees and any monies recovered by the department which are attributable to collections of civil penalties under section 6 or to costs under section 7 not owed the Petroleum Storage Tank Trust Fund. All said monies shall be deposited as special revenues to be used in the administration of this act.

SECTION 9. (a) Nothing in this act or the regulations promulgated under this act shall prevent any person from undertaking corrective action which would provide reasonable protection of public health and safety and the environment.

(b) Notwithstanding any other provisions of this act, the director, upon finding that the release may present an imminent and substantial hazard to the health of persons or to the environment and that an emergency exists requiring immediate action to protect the public health and welfare or the environment may, without notice or hearing, issue an order reciting the existence of such an imminent hazard and emergency and requiring that such action be taken as he determines to be necessary to protect the health of such persons or the environment and to meet the emergency.

(c) The order of the director may include, but is not limited to, directing the owner or operator of the site which constitutes the hazard, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes the hazard and, with respect to a facility or site, may order cessation of operation.

(d) Any person to whom the order is directed shall comply with it immediately, but, on written application to the director within ten (10) days of the issuance of the order, that person shall be afforded a hearing before the Pollution Control and Ecology Commission within ten (10) days after receipt of the written request.

(e) On the basis of the hearing, the commission shall continue the order in effect, or shall revoke or modify it.

SECTION 10. (a) Owners or operators of storage tanks who are unable to demonstrate financial responsibility in the minimum amounts specified by the department may establish an insurance pool in order to demonstrate such financial responsibility.

(b) The formation and operation of an insurance pool under this section shall be subject to approval by the Commissioner of Insurance who shall, after notice and hearing, establish through rules and regulations a method for approval and monitoring such pools. Such regulations may include:

- (1) Provisions for periodic examinations of financial condition including inspection of books, papers, accounts and affairs of the plan;
  - (2) Conditions for participation in the plan;
  - (3) Minimum amounts of cash reserves and insurance coverage to be acquired;
  - (4) Requirements for sound management of the plan;
  - (5) Grounds for suspension or withdrawal of approval of the plan;
- and
- (6) Grounds for termination of the plan.

SECTION 11. (a) Any information which would constitute a trade secret under the Arkansas Trade Secrets Act, Ark. Code §4-75-601 et seq., obtained by the Department or its employees in the administration of this act, except release data, shall be kept confidential.

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

SECTION 12. (a) This act shall supersede and preempt all local government laws, ordinances and regulations pertaining to underground storage tanks except for any applicable local building permit or fire code requirements pertaining to installation of underground tanks.

(b) The provisions of this act, and the rules and regulations promulgated pursuant to it, shall govern if they conflict with the provisions of the Arkansas Water and Air Pollution Control Act, Ark. Code §§8-4-101 - 8-4-106, 8-4-201 - 8-4-229, and 8-4-301 - 8-4-313; the Arkansas Solid Waste Management Act, Ark. Code §8-6-201 et seq.; or the Arkansas Hazardous Waste Management Act, Ark. Code §8-7-201 et seq.; or any action taken by the department under those laws.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are declared to be severable.

SECTION 14. If any provision of this act is found to conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act.

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

SECTION 16. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 17. EMERGENCY. It is hereby found and determined by the General Assembly that the effectiveness of this Act on July 1, 1989 is essential to the operation of the Underground Storage Tank Program created herein in the Department of Pollution Control and Ecology and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989.



