

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

HOUSE BILL

1152

By: Representative Lipton

For An Act To Be Entitled

"AN ACT TO ESTABLISH A PETROLEUM STORAGE TANK TRUST FUND; TO PROVIDE A PROCEDURE FOR RECOVERY OF COSTS OR DAMAGES AS A RESULT OF LEAKING TANKS; TO ASSESS AN ENVIRONMENTAL ASSURANCE FEE FOR PETROLEUM STORAGE TANKS; AND FOR OTHER PURPOSES."

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

SECTION 1. This act may be known and may be cited as the "Petroleum Storage Tank Trust Fund Act."

SECTION 2. Definitions.

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) "Accidental release" means any sudden or nonsudden release of petroleum from a storage tank that results in a need for corrective action or compensation for bodily injury or property damage, or both, neither expected nor intended by the tank owner or operator.

(3) "Advisory committee" or "committee" means the Advisory Committee on Petroleum Storage Tanks as established in this act.

(4) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(5) "Corrective action" means those actions which may be necessary to

protect human health and the environment as a result of an accidental release, sudden or nonsudden.

(6) "Department" means the Department of Pollution Control and Ecology;

(7) "Director" means the Director of the Department of Pollution Control and Ecology;

(8) "Distributor" means and includes any person, including the State of Arkansas and any political subdivision thereof, but not including the United States of America or any of its instrumentalities except to the extent permitted by the Constitution or laws thereof, who is customarily in the wholesale business offering for resale or delivery of motor fuels to dealers, consumers, or others in tanks of two hundred (200) gallons or more which are not connected to a motor vehicle and:

(A) Making the first sale in the State of Arkansas of any motor fuel, imported into the state from any other state, territory, or foreign country, after it shall have been received within this state within the meaning of Ark. Code §§26-55-201 et seq.; or

(B) Consuming or using in the State of Arkansas any motor fuel so imported and shall have purchased it before it shall have been received by any other person in this state, within the meaning of Ark. Code §§26-55-201 et seq.; or

(C) Producing, refining, preparing, distilling, manufacturing, blending, or compounding motor fuel in this state;

(9) "Fund" means the Petroleum Storage Tank Trust Fund created by this act;

(10) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from a storage tank.

(11) "Owner or operator," when the owner or operator are separate parties, means the party that is required to obtain financial assurances under the state or federal underground storage tank program.

(12) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, state or federal government or agency, or any other legal entity, however organized.

(13) "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).

(14) "Storage tank" means an above ground storage tank or underground

storage tank as defined in this act.

(15) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a 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.

(16) "Supplier" means any person who is customarily in the wholesale business of offering distillate special fuels or liquefied gas special fuels for resale or use to any person in this state and who makes bulk sales of fuel. The term "supplier" shall include pipeline importers, first receivers, and second receivers;

(17) "Terminal" means a bulk storage facility for storing petroleum products supplied by pipeline or marine vessels.

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

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

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

(C) septic tank,

(D) 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 3. (a) There is established on the books of the State Treasurer, State Auditor and Chief Fiscal Officer of the State a fund to be known as the "Petroleum Storage Tank Trust Fund," hereinafter referred to as the "fund."

(b) The fund will be administered by the director who shall make disbursements from the fund as authorized by this act.

(c) The fund shall consist of gifts, grants, donations and such other funds as may be made available by the General Assembly including all interest earned upon money deposited in the fund, all fees assessed under this act, any monies recovered by the department and any other monies legally designated for the fund.

(d) Monies in the fund may be expended by the director solely for the following purposes pursuant to the provisions of subsection (e):

(1) The state share mandated by the Resource Conservation and Recovery Act of 1976, as amended;

(2) To pay those incurred by the commission or the advisory committee;

(3) To pay reimbursement for taking corrective action or to compensate third parties for bodily injury and property damage, or both, caused by accidental releases from qualified storage tanks.

(4) To pay reasonable and necessary costs and expenses of the department for taking corrective action caused by accidental releases from a storage tank of unknown ownership or when corrective action is not commenced by the owner or operator in a timely manner.

(e) (1) No expenditure from the fund shall be made prior to the approval of the commission.

(2) No expenditure from the fund shall be made for expenses for retrofitting or replacement of petroleum storage tanks.

(f) The State Board of Finance shall serve as custodian of the fund and assist the commission by investing available balances in such a manner that sufficient funds will continue to be available to pay any authorized expenditures approved by the Commission.

SECTION 4. (a) Except as provided in (c) below, there is established a

petroleum environmental assurance fee to be paid on each gallon of motor fuel or distillate special fuel purchased or imported into this state.

(b) The fee shall be paid by the first distributor or supplier receiving fuel from a terminal in this state or, if the fuel will never be stored in a terminal in this state, then by the distributor or supplier who first imports fuel into this state by tank truck.

(c) Exchanges of fuels on a gallon-for-gallon basis within a terminal or fuels exported from this state are exempt from the fee.

(d) Proof of payment shall be provided to the owner or operator.

(e) The fee shall be remitted to the Director of the Department of Finance and Administration at the time, in the manner, and on forms prescribed by the director, and may be collected and remitted at the same time and in the same manner as the Motor Fuel Tax and Special Motor Fuels Tax under Ark. Code §§26-55-101 et seq. and §§26-56-101 et seq.

(f) The environmental assurance fee shall be at a rate of two-tenths (2/10ths) of one cent for each gallon until the balance of the fund reaches ten million dollars (\$10,000,000) and shall drop at the beginning of the next calendar quarter to such rate as the commission determines is necessary to maintain a ten million dollar (\$10,000,000) balance. The rate shall be increased at the beginning of the next calendar quarter when the fund balance drops to six million dollars (\$6,000,000) or less and remain at the higher amount not to exceed two-tenths (2/10ths) of one cent until the fund balance reaches ten million dollars (\$10,000,000).

(g) The commission shall review the fund balance at least quarterly and report the rate of collection for the environmental assurance fee for the upcoming quarter to the Director of the Department of Finance and Administration.

(h) All fees collected under this act shall be deposited in the trust fund account as established herein.

(i) All fees shall be subject to collection and enforcement of collection under the Arkansas Tax Procedures Act, Ark. Code §§26-18-101 et seq.

SECTION 5. (a) The Director of the Department of Finance and Administration is authorized to adopt appropriate rules and regulations not inconsistent with this act as he may deem necessary to carry out the intent

and purposes or, to assure compliance with, this act.

(b) The Commission is authorized to adopt appropriate rules and regulations not inconsistent with this act to carry out the intent and purposes or to assure compliance with this act.

SECTION 6. (a) (1) There is established an Advisory Committee on Petroleum Storage Tanks to be composed of the following members:

(A) A representative from the property and casualty segment of the insurance industry;

(B) A representative from a company that is a refiner and also has service stations or other motor fuel retail outlets in the state;

(C) A representative from a company that is a jobber or wholesaler of petroleum products in the state;

(D) An independent retail service station dealer;

(E) State Fire Marshall or his designee;

(F) A representative from a company that installs or repairs petroleum storage tanks; and

(G) A representative from a company that has one or more employees with knowledge and expertise regarding environmental protection and management matters.

(2) The governor shall appoint the members of the advisory committee. The member appointed under subsection (1)(B) shall be from a list of three names submitted by the Arkansas Petroleum Council. The member appointed under subsection (1)(C) shall be from a list of three names submitted by the Arkansas Oil Marketeers Association. The member appointed under (1)(D) shall be from a list of three names submitted by the Service Station Dealers of Arkansas. The member appointed under (1)(G) shall be from a list of three names submitted by the Arkansas Federation of Water and Air Users, Inc.

(3) The members of the committee shall serve four (4) year terms and until their successor has been appointed with the terms of two initial members expiring on December 31 after two years of service, the terms of two initial members expiring on December 31 after three years of service, the terms of three initial members expiring on December 31 after four years of service. The expiration of terms of initial members shall be decided by lot during the first meeting of the committee.

(4) Any vacancies shall be filled by the governor to serve the remainder of the term.

(b) Committee members shall serve without compensation but shall be entitled to per diem and mileage allowances for attendance at committee meetings at the same rate authorized by law for legislators' attendance at meetings of joint interim committees of the General Assembly. Committee members shall be entitled to reimbursement for actual expenses incurred for lodging while attending committee meetings which involve overnight stays.

(c) The committee shall select a member to serve as chairman each year.

(d) The committee shall meet as necessary to carry out its duties under this act and at the call of the chair.

(e) The department shall provide adequate staff to support the activities of the committee.

(f) The committee shall adopt all rules and regulations necessary for the conduct of its business.

(g) The committee shall advise with and make recommendations to the Commission regarding claims for payment under this act.

(h) The committee shall advise the department regarding promulgation of rules and regulations concerning storage tanks.

(i) No member of the committee shall participate in any decision on any claim in which the firm or organization by which that member is employed, or in which that member has a direct or indirect financial interest is involved.

SECTION 7. (a) No payment for corrective action shall be paid from the fund until the owner or operator has expended fifty thousand dollars (\$50,000) on corrective action for the occurrence. It is the intent of the General Assembly that this initial level of expenditure be considered the equivalent of an insurance policy deductible.

(b) Payment for corrective action shall not exceed one million dollars (\$1,000,000) per occurrence.

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

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

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

petroleum storage tanks;

(3) The owner or operator was in substantial compliance as determined by the commission of all state and federal laws and regulations relating to storage tanks including those relating to financial responsibility;

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

(d) The commission may provide through rule and regulation for interim payments for corrective action. Interim payments shall be subject to these limitations:

(1) Proof of compliance with the requirement of (c)(2) through (4) of this section is provided.

(2) Specific assurances must be provided that an approved corrective action plan, department directive or order, is being implemented and followed to date.

(3) Interim payments shall consist of payment of an amount not to exceed ninety percent (90%) of reimburseable expenditures to date. The remaining ten percent (10%) shall be released only upon final payment for corrective action concerning the occurrence.

SECTION 8. (a) No payment to any third party who brings a third party claim against any owner or operator for bodily injury or property damage, or both, shall be paid from the fund until the owner or operator has expended fifty thousand dollars (\$50,000) on third party claims for the occurrence. It is the intent of the General Assembly that this initial level of expenditure be considered the equivalent of an insurance policy deductible.

(b) Payment for third party claims shall not exceed five hundred thousand dollars (\$500,000) per occurrence.

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

(1) At the time of the occurrence, the owner or operator was in substantial compliance as determined by the commission of all state and federal laws and regulations relating to storage tanks including those relating to financial responsibility;

(2) The department was given timely notice of the release and the

owner or operator cooperated fully with the department in corrective action to address the release;

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

(4) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from a qualified storage tank has been entered.

(d) The commission may provide through rule and regulation for payments for third party claims under settlement agreements between the parties without entry of a final court order. Settlement payments for third party claims shall be subject to these limitations:

(1) Proof of compliance with the requirement of (c)(1) through (3) of this section is provided.

(2) Specific assurances, such as dismissal with prejudice of the cause of action, that payment shall release the owner or operator from all future liability to the third party claimant for this occurrence.

(3) A decision by the commission that litigation would result in costs to the fund which would exceed the settlement amount and therefore, it would be in the best interests of the fund to pay the settlement amount.

SECTION 9. 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 this act are declared to be severable.

SECTION 10. 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 11. 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 12. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 13. EMERGENCY. It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that a fund be established for corrective action and compensation to third parties to maintain the environment and protect the public health, welfare and safety; that for immediate funds to begin accumulating in this fund, under section 4 of this act, it is necessary for section 4 to become effective July 1, 1989 and all other provisions to become effective immediately upon passage. 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 its passage and approval with section 4 of this act to become effective July 1989.