

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

375

By: Senators Miles and Harriman

For An Act To Be Entitled

"AN ACT TO PROTECT THE HEALTH AND WELFARE OF THE CITIZENS OF THE STATE OF ARKANSAS BY PROMOTING, ENCOURAGING AND FACILITATING IMPLEMENTATION OF APPROVED RESPONSE ACTIONS AT FEDERALLY-LISTED SUPERFUND SITES; AND FOR OTHER PURPOSES."

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

SECTION 1. Legislative Intent. The purpose of this act is to encourage response actions at federally-listed hazardous sites; to facilitate agreements related to property access and use to implement response actions at federally-listed hazardous sites; to discourage activities that interfere with or obstruct such response actions; to provide for the future use of federally-listed hazardous sites after remediation.

SECTION 2. Definitions. As used in this act, the following terms shall have the following meanings:

(a) "hazardous site" shall mean any geographic area located, in whole or in part, in the State of Arkansas access to or use of which is determined by the Arkansas Department of Pollution Control and Ecology to be necessary or appropriate to implement a response ordered by the President of the United States pursuant to 42 U.S.C. §§9604(a) or 9606(a).

(b) "hazardous substance" shall mean (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this act, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution

Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under sub-paragraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(c) "passive site owner" shall mean any person or entity owning any interest in any portion of a hazardous site, whether as owner, joint tenant, lessee, mortgagee, licensee, easement holder, mineral owner, or otherwise, and who has not entered into an agreement pursuant to 42 U.S.C. §9622 for that site.

(d) "response costs" shall mean all amounts of removal or remedial action, including any costs and expenses incurred as a result of contractor delays, and other necessary amounts including attorneys' fees and expenses reasonably incurred by any entity (including, but not limited to, the United States of America, the State of Arkansas, the governments of any other states, corporations, partnerships, and private citizens) to investigate and secure a response action at a hazardous site.

(e) "settling party" shall mean any person who has entered into an agreement with the United States pursuant to 42 U.S.C. §9622.

SECTION 3. Interference by Passive Site Owners. No passive site owner shall unduly impede or interfere with the efforts of a settling party to carry out an approved response action at a hazardous site.

SECTION 4. Liability for Violations. Any passive site owner who violates Section III of this act shall be liable for any response costs resulting from such violation.

SECTION 5. Injunction. The chancery court of the county in which the hazardous site is located shall have jurisdiction to enjoin any passive site owner from unduly impeding or interfering with the implementation of a response action at such hazardous site.

SECTION 6. Restrictions on Use of Hazardous Sites. Construction on or at a hazardous site, and the use of such site for any residential, commercial, manufacturing, industrial, or recreational purposes, shall be prohibited unless and until the Arkansas Department of Pollution Control and Ecology issues an order terminating, wholly or partially, such prohibitions. Such order shall be subject to the procedural guidelines set forth in §§212-14 and §§222-29 of the Arkansas Water and Air Pollution Control Act.

SECTION 7. Ad Valorem Tax Exemption. Upon initiation of a response action at a hazardous site, such site shall be appraised at no value for purposes of any ad valorem taxes levied by any state, county, or local governmental authority unless and until the Arkansas Department of Pollution Control & Ecology issues an order wholly terminating the construction and use prohibitions established by Section VI of this act. This section shall not apply to the interest in such hazardous site owned by any passive site owner or its successors and assigns that has violated Section III of this act.

SECTION 8. Director and Officer Liability. No director or officer of a corporation whose sole purpose (as stated in its Articles of Incorporation) is to own, implement a response action at, and/or hold one or more hazardous sites, shall be liable to any person or entity for any action of the corporation reasonably related to the stated purpose of the corporation. This section shall not apply to any action of the corporation resulting from the gross negligence or willful misconduct of a director or officer of said corporation.

SECTION 9. 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 10. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 11. EMERGENCY. It is hereby found and determined by the General Assembly that it is urgent that appropriate action be taken to

promote and encourage implementation of response actions at federally listed hazardous sites; that this act is designed to promote and encourage appropriate response actions at such sites as soon as possible and should be given effect immediately. 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.