

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995

A Bill

HOUSE BILL 1076

4 By: Representatives Goodwin, Calhoun, Dietz, M. Wilson, von Gremp, Wallis,
5 and Curran

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For An Act To Be Entitled

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9 "AN ACT TO AMEND THE REMEDIAL ACTION TRUST FUND ACT TO
10 PROVIDE FOR THE VOLUNTARY CLEANUP OF ABANDONED INDUSTRIAL
11 SITES; FURTHER DEFINING THE CLEANUP RESPONSIBILITIES OF
12 INNOCENT PROSPECTIVE PURCHASERS OF ABANDONED INDUSTRIAL
13 SITES; AND FOR OTHER PURPOSES."

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Subtitle

16 "TO PROVIDE FOR THE VOLUNTARY CLEANUP OF
17 ABANDONED INDUSTRIAL SITES; FURTHER
18 DEFINE CLEANUP RESPONSIBILITIES OF
19 PROSPECTIVE PURCHASERS OF ABANDONED
20 INDUSTRIAL SITES."

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

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24 SECTION 1. Declaration of Policy.

25 The General Assembly finds and declares as follow:

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

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

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

1 (4) Incentives should be put in place to encourage prospective
2 purchasers to voluntarily develop and implement cleanup plans of abandoned
3 industrial sites without the use of taxpayer funds or the need for
4 adversarial enforcement actions by the Arkansas Department of Pollution
5 Control and Ecology;

6 (5) The Arkansas Department of Pollution Control and Ecology now
7 routinely, through its permitting policies, determines when contamination
8 will and will not pose unacceptable risks to public health or the environment
9 and similar concepts are used in establishing cleanup policies for
10 abandoned industrial sites;

11 (6) Parties and persons responsible under law for pollution at
12 industrial sites should perform remedial responses which are fully consistent
13 with existing requirements; and

14 (7) As an incentive to promote the redevelopment of abandoned
15 industrial sites, persons not responsible for preexisting pollution at or
16 contamination on industrial sites should meet alternative cleanup
17 requirements if they acquire title after fully disclosing the nature of
18 conditions at the site and declaring and committing to a specified future
19 land use of the site.

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21 SECTION 2. Arkansas Code 8-7-503 is amended by inserting five
22 additional subsections at the end thereof to read as follows:

23 "(13) Abandoned industrial site means a site on which one had an
24 industrial activity and for which no responsible person can reasonably be
25 pursued for a remedial response to clean up the site;

26 (14) Industrial activity means commercial, manufacturing or any
27 other activity done to further either the development, manufacturing or
28 distribution of goods and services, including, but not limited to, research
29 and development, warehousing, shipping, transport, remanufacturing, repair
30 and maintenance of commercial machinery and equipment;

31 (15) Property means real property and improvements, including:

32 (A) A facility as defined in the Comprehensive Environmental
33 Response, Compensation and Liability Act of 1980. 42 U.S.C. § 9601 (9).

34 (B) A site as defined in the Arkansas Hazardous Waste Management
35 Act of 1979. Ark. Code Ann. § 8-7-203(15).

1 (16) Prospective purchaser means a person who expresses a
2 willingness to acquire an abandoned industrial site and is not responsible
3 for any preexisting pollution at or contamination on the site;

4 (17) Site assessment means the site assessment submitted by a
5 prospective purchaser to establish the baseline level of existing
6 contamination on a site. The assessment shall, at a minimum, identify the
7 location and extent of contamination, the quantity or level of contamination,
8 the type of contamination, the probable source of contamination and the risk
9 or threat associated with the contamination as described in section 8-7-523
10 herein. The assessment shall also include a description of the use which the
11 prospective purchaser intends to make of the site."

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13 SECTION 3. Arkansas Code 8-7-520(a) is amended to read as follows:

14 "(a) Any person who has undertaken or is undertaking remedial action
15 at a hazardous substance site in response to an administrative or judicial
16 order initiated against such person pursuant to § 8-7-508 or 8-7-523(d) may
17 obtain contribution from any other person who is liable for such hazardous
18 substance site."

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20 SECTION 4. Subchapter 5 of Chapter 7 of Title 8 of the Arkansas Code
21 is amended by inserting an additional section at the end thereof to read as
22 follows:

23 "8-7-523.

24 (a) This subchapter applies to a person who:

25 (1) is a prospective purchaser of an abandoned industrial site;

26 (2) did not, by act or omission, cause or contribute to any
27 release or threatened release of a hazardous substance on or from the
28 identified abandoned industrial site or is otherwise considered to be a
29 responsible party pursuant to A.C.A. § 8-7-512(a)(2)-(4); and

30 (3) will reuse or redevelop the property for industrial
31 activities to create employment expansion.

32 (b) The prospective purchaser who wishes to take advantage of the
33 limitation of liability under this subchapter shall submit a proposed
34 comprehensive site assessment to the Department for review and comment to
35 establish the baseline of existing contamination on the site. If the

1 prospective purchaser elects to proceed upon receipt of the Department_s
2 comments, the prospective purchaser shall perform the comprehensive site
3 assessment consistent with the Department_s comments.

4 (c) Following completion of a comprehensive site assessment, the
5 Department shall determine whether the assessment adequately identifies the
6 environmental risks posed by the abandoned industrial site.

7 (d) The Department and the prospective purchaser shall enter into a
8 consent administrative order based on the results of the comprehensive site
9 assessment. The consent administrative order shall establish cleanup
10 liabilities and obligations for the abandoned industrial site. The
11 prospective purchaser shall provide notice of the consent administrative
12 order in a newspaper of general circulation that serves the area in which the
13 abandoned industrial site is located. The notice shall be subject to the
14 approval of the Department. The consent administrative order shall establish
15 the intended use of the property that was preliminarily described in the
16 comprehensive site assessment. The description of the intended use shall
17 identify the site and the nature of the activity that the prospective
18 purchaser proposes for the site.

19 (e) Once the prospective purchaser has acquired legal title to the
20 abandoned industrial site, the purchaser will be responsible to remediate,
21 remove and properly dispose of or manage, consistent with applicable
22 requirements, any containerized wastes existing on site at the time of
23 purchase, including drummed waste, lagoons and impoundments and wastes in
24 aboveground and underground tanks. Wastes that are disposed of or managed on
25 site will remain subject to applicable requirements.

26 (f) Once the prospective purchaser has acquired legal title to the
27 abandoned industrial site, the purchaser will be responsible to take all
28 necessary steps to prevent migration of hazardous substances beyond the
29 property boundary.

30 (g) Once the prospective purchaser has acquired legal title to the
31 abandoned industrial site, the purchaser shall be responsible to remedy any
32 releases of hazardous substances.

33 (h) For purposes of subsection (g) above, releases of hazardous
34 substances are those conditions which pose either:

35 (1) An unacceptable risk, either acute or chronic, to the health

1 of employees or any other person likely to be exposed to the release at the
2 site, based upon the intended site use described by the prospective buyer in
3 its comprehensive site assessment and described by the consent administrative
4 order. A buyer may not use the property in a manner which differs from the
5 intended use identified in the consent administrative order contemplated by
6 subsection (d) above, unless the Department and buyer agree to a modification
7 of the consent administrative order; or

8 (2) An unacceptable risk to degrade either groundwaters or
9 surface waters, or any risk to degrade the extraordinary resource waters of
10 the State of Arkansas.

11 (i) A remedial action pursuant to subsection (g) above, shall
12 eliminate unacceptable risks and prevent degradation of groundwaters and
13 surface waters which would cause such unacceptable risk and/or degradation
14 described above.

15 (j) The selection of remedial action shall be approved by the
16 Department after reasonable notice and after opportunity for hearing and
17 shall become an amendment to the consent administrative order entered into
18 pursuant to subsection (d) above.

19 (1) Selection of a remedial action shall include consideration
20 of the following factors:

21 (A) The intended and allowable use of the abandoned
22 industrial site;

23 (B) The ability of the contaminants to move in a form and
24 manner which would result in exposure to humans and the surrounding
25 environment at levels considered to be a significant health risk as described
26 in subsection(h)(1) above;

27 (C) Consideration of the potential environmental risks of
28 proposed alternative remedial action and its technical feasibility,
29 reliability and cost effectiveness;

30 (D) When an imminent and substantial endangerment is
31 posed; and

32 (E) Whether institutional or engineering controls
33 eliminate or partially eliminate the imminent and substantial endangerment or
34 otherwise contain or prevent migration.

35 (2) Remedial actions pursuant to subsection (g) above are not

1 required to provide for the removal or remediation of the conditions or
2 contaminants causing a release or threatened release on the abandoned
3 industrial site if:

4 (A) Contaminants pose no unacceptable risk as described in
5 subsections (h)(1) and (2) or the remedial actions proposed in the assessment
6 and intended uses of the industrial site will eliminate unacceptable risks as
7 described in subsection (h)(1) and (2) above; or

8 (B) Activities required to allow the intended reuse or
9 redevelopment of the industrial site are in a manner which will protect
10 public health and the environment as described in subsections (h)(1) and (2)
11 above.

12 (k) Nothing in this subchapter shall relieve the prospective purchaser
13 after acquisition of legal title to the abandoned industrial site of any
14 liability for contamination later caused by the purchaser.

15 (l) A prospective purchaser of an abandoned industrial site under this
16 subchapter shall not be responsible for paying any fines or penalties levied
17 against any person responsible for contamination on the abandoned industrial
18 sites prior to the consent administrative order with the Department.

19 (m) This subchapter shall not relieve the purchaser of any liability
20 under law for preexisting problems not identified in the comprehensive site
21 assessment.

22 (n) Once the prospective purchaser has acquired legal title to the
23 abandoned industrial site, the purchaser shall take all the steps necessary
24 to prevent aggravating or contributing to the contamination of the air, land
25 or water, including downward migration of contamination, from any existing
26 contamination on the site. The purchaser shall not use or redevelop the site
27 in any way which is likely to interfere with subsequent remedial actions or
28 in a manner that differs from the intended use established in the consent
29 administrative order described in subsection (d) above.

30 (o) A restriction shall be placed on the deed for the property covered
31 by this subchapter which restricts the use of the property to industrial
32 activities and compatible uses which will protect the integrity of any
33 remedial action measures implemented on the property.

34 (p) The consent administrative order, including all rights and cleanup
35 liabilities entered into by the Department and the prospective purchaser

1 under subsection (d) above, is transferable with written notice to the
2 Department in its entirety to any and all subsequent owners of the property
3 who did not, by act or omission, cause or contribute to any release or
4 threatened release of hazardous substances on the industrial site.

5 (q) Subsequent owners shall receive a copy of the consent
6 administrative order from the prospective purchaser and shall not use the
7 site in a manner which is inconsistent with the intended use described in the
8 consent administrative order authorized by subsection (d) above.

9 (r) Within thirty (30) days after the date the prospective purchaser
10 acquires legal title to the abandoned industrial site, the purchaser shall
11 file a notice of the consent administrative order with the clerk of the
12 chancery court in the county in which the site is located. Notice of any
13 subsequent amendments to the consent administrative order shall also be filed
14 with the clerk of the chancery court within thirty (30) days after their
15 effective dates. The clerk of the chancery court shall docket and record the
16 notices so that they appear in the purchaser_s chain of title."

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18 SECTION 5. All provisions of this act of a general and permanent
19 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
20 Code Revision Commission shall incorporate the same in the Code.

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22 SECTION 6. If any provision of this act or the application thereof to
23 any person or circumstance is held invalid, such invalidity shall not affect
24 other provisions or applications of the act which can be given effect without
25 the invalid provision or application, and to this end the provisions of this
26 act are declared to be severable.

27 SECTION 7. All laws and parts of laws in conflict with this act are
28 hereby repealed.

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