

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

A Bill

SENATE BILL

88

4 By: Senators Wilson, Mahony, and Ross

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For An Act To Be Entitled

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

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Subtitle

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

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

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SECTION 1. Declaration of Policy.

24 The General Assembly finds and declares as follow:

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

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

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

35 (4) Incentives should be put in place to encourage prospective

1 purchasers to voluntarily develop and implement cleanup plans of abandoned
2 industrial sites without the use of taxpayer funds or the need for
3 adversarial enforcement actions by the Arkansas Department of Pollution
4 Control and Ecology;

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

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

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

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

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

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

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

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

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

35 (16) Prospective purchaser means a person who expresses a

1 willingness to acquire an abandoned industrial site and is not responsible
2 for any preexisting pollution at or contamination on the site;

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

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

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

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

22 "8-7-523.

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

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

25 (2) did not, by act or omission, cause or contribute to any

26 release or threatened release of a hazardous substance on or from the
27 identified abandoned industrial site or is otherwise considered to be a
28 responsible party pursuant to A.C.A. § 8-7-512(a)(2)-(4); and

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

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

1 comments, the prospective purchaser shall perform the comprehensive site
2 assessment consistent with the Department_s comments.

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

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

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

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

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

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

34 (l) An unacceptable risk, either acute or chronic, to the health
35 of employees or any other person likely to be exposed to the release at the

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

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

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

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

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

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

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

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

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

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

34 (2) Remedial actions pursuant to subsection (g) above are not
35 required to provide for the removal or remediation of the conditions or

1 contaminants causing a release or threatened release on the abandoned
2 industrial site if:

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

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

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

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

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

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

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

33 (p) The consent administrative order, including all rights and cleanup
34 liabilities entered into by the Department and the prospective purchaser
35 under subsection (d) above, is transferable with written notice to the

1 Department in its entirety to any and all subsequent owners of the property
2 who did not, by act or omission, cause or contribute to any release or
3 threatened release of hazardous substances on the industrial site.

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

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

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

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

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

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