

State of Arkansas

82nd General Assembly

Regular Session, 1999

A Bill

HOUSE BILL 1976

By: Representative Hathorn

For An Act To Be Entitled

"AN ACT TO AMEND ARKANSAS CODE ANNOTATED §§ 8-7-403
AND 8-7-408, EMERGENCY RESPONSE FUND ACT; TO AMEND §
8-7-409, ORDERS OF THE DIRECTOR; AND TO AMEND § 8-7-
416 TO CLARIFY THE THIRD PARTY DEFENSE AND TO ADD AN
INNOCENT LANDOWNER DEFENSE. "

Subtitle

"TO AMEND THE EMERGENCY RESPONSE FUND
ACT; AMEND ARKANSAS CODE 8-7-409, ORDERS
OF THE DIRECTOR; AND ARKANSAS CODE 8-7-
416 TO CLARIFY THE THIRD PARTY DEFENSE
AND TO ADD AN INNOCENT LANDOWNER
DEFENSE. "

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

SECTION 1. Arkansas Code 8-7-403 is amended to read as follows:

"8-7-403. Definitions.

(a) As used in this subchapter, unless the context otherwise requires:

(1) 'Department' means the Arkansas Department of ~~Pollution~~
~~Control and Ecology~~ Environmental Quality;

(2) 'Commission' means the Arkansas Pollution Control and Ecology
Commis sion;

(3) 'Director' means the Director of the Arkansas Department of
~~Pollution Control and Ecology~~ Environmental Quality;

(4) 'Federal act' means the Comprehensive Environmental Response,

1 Compensation, and Liability Act of 1980, Public Law 96-510;

2 (5) 'Fund' means the Emergency Response Fund created by this
3 subchapter;

4 (6) 'Person' means any individual, corporation, company, firm,
5 partnership, association, trust, joint-stock company or trust, venture, state
6 or federal government or agency, or any other legal entity, however organized;

7 (7) 'Releases of hazardous substances' means any spilling,
8 leaking, pouring, emitting, emptying, discharging, injecting, escaping,
9 leaching, dumping, or disposing of hazardous substances into the environment;

10 (8) 'Hazardous substance' means:

11 (A) As of March 20, 1985, any substance designated pursuant
12 to § 311(b)(2)(A) of the Federal Water Pollution Control Act, ~~(Public Law~~
13 ~~92-500)~~; any element, compound mixture, solution, or substance designated
14 pursuant to § 102 of Title I of the federal Comprehensive Environmental
15 Response, Compensation, and Liability Act of 1980, ~~(Public Law 96-510)~~; any
16 hazardous waste, including polychlorinated biphenyls, as defined by the
17 Arkansas Hazardous Waste Management Act, ~~as amended~~, § 8-7-201 et seq., and
18 the regulations promulgated thereunder; any toxic pollutant listed under §
19 307(a) of the Federal Water Pollution Control Act, ~~(Public Law 92-500)~~; any
20 hazardous air pollutant listed under § 112 of the federal Clean Air Act, ~~(Public Law 95-95)~~; and any hazardous chemical substance or mixture regulated
21 under § 7 of the federal Toxic Substances Control Act, ~~(Public Law 94-469)~~; and

22 (B) Any other substance or pollutant designated by
23 regulations of the commission promulgated under this subchapter;

24 (9) 'Treatment', 'storage', 'disposal', 'generation', and
25 'hazardous waste' shall have the meanings provided in § 8-7-203, and the
26 regulations promulgated pursuant to ~~§ 8-7-201 et seq.~~ the Arkansas Hazardous
27 Waste Management Act of 1979;

28 (10) ~~'Response action' means action necessary to effect permanent~~
29 ~~control, prevention, treatment, or containment of releases and threatened~~
30 ~~releases, including the removal of hazardous substances from the~~
31 ~~environment where such removal is necessary to protect public health or~~
32 ~~safety. These actions are intended to include investigations designed to~~
33 ~~determine the need for and scope of remedial action and such planning, legal,~~
34 ~~fiscal, economic, engineering, geological, technical, or architectural studies~~
35 ~~as necessary to plan and direct remedial actions, to recover the cost thereof,~~
36

~~and to enforce the provisions of this subchapter; 'Remove', 'response', or~~
~~'removal action' means:~~

(A) The cleanup or removal of released hazardous substances
from the environment; or

(B) Such actions as may be necessary to be taken in the
event of the threat of release of hazardous substances into the environment;
or

(C) Such actions as may be necessary to monitor, assess, and
evaluate the release or threat of release of hazardous substances; or

(D) The disposal of removed material; or

(E) The taking of such other actions as may be necessary to
prevent, minimize, or mitigate damage to the public health or welfare or to
the environment, which may otherwise result from the release or threat of
release.

(F) The terms may include, in addition, without being
limited to:

(i) Security fencing or other measures to limit
access;

(ii) Provision of alternative water supplies,
temporary evacuation and housing of threatened individuals not otherwise
provided for;

(iii) Action taken under Arkansas Code Annotated § 8-
7-508;

(iv) Post-removal site control, where appropriate; and

(v) Any emergency assistance which may be provided
under this Act.

(G) For the purpose of this Act, the terms also include the
recovery of costs of actions thereto and enforcement activities related
thereto.

(11) 'Threatened release' means any situation where a sudden
 release of hazardous substances can be reasonably expected unless prevented by
 change of operation or installation or construction of containment or
 treatment devices or by removal or other response action;

(12) 'Local government' means any city of the first class, any
 city of the second class, or any incorporated town or any county government of
 the State of Arkansas;

1 (13) 'Facility' shall have the meaning provided in § 8-7-203 and
 2 the regulations promulgated pursuant to the Arkansas Hazardous Waste
 3 Management Act of 1979;

4 (14) 'Operator' means any person or persons who manages or
 5 operates a facility or hazardous substance site or otherwise controls
 6 activities at a facility or hazardous substance site, including assuring the
 7 operation of said facility is in accordance with all applicable provisions of
 8 hazardous waste management regulation;

9 (15) 'Owner' means any person who owns a facility or hazardous
 10 substance site or part of a facility or hazardous substance site;

11 (16) 'Third Party' means any person who is not an owner, operator,
 12 transporter, generator, an employee or agent of an owner, operator,
 13 transporter, generator, or a person whose act or omission occurs in connection
 14 with a contractual relationship existing directly or indirectly with an owner,
 15 operator, transporter or generator; and

16 (17) 'Hazardous substance site' means any site or facility where
 17 hazardous substances have been disposed of or from which there is a release of
 18 threatened release of hazardous substances.

19 (b)(1)(A) As used in §§ 8-7-413--8-7-415, unless the context otherwise
 20 requires, "responsible party" means:

21 ~~(A)(i)~~ The owner or operator of a facility or site at which
 22 hazardous substances have been disposed of and from which releases or
 23 threatened releases of hazardous substances occur;

24 ~~(B)(ii)~~ Any person who, at the time of disposal of a
 25 hazardous substance, owned or operated a facility or site from which releases
 26 or threatened releases of hazardous substances occur;

27 ~~(C)(iii)~~ Any generator of hazardous substances who causes a
 28 release or threatened release of hazardous substances or who, at the time of
 29 disposal, caused the substance to be disposed of at a facility or site
 30 from which releases or threatened releases of hazardous substances
 31 occur; or

32 ~~(D)(iv)~~ Any transporter of hazardous substances who causes a
 33 release or threatened release of such hazardous substances or who, at the time
 34 of disposal, selected the facility or site of disposal from which
 35 releases or threatened releases of the substances occur.

36 ~~(2)(B)~~ 'Responsible party' does not include:

1 ~~(A)(i)~~ A person who merely provides financing or loans to a
 2 responsible party; or

3 ~~(B)(ii)~~ A person who obtains title to property through
 4 foreclosure or through the conveyance of property in total or partial
 5 satisfaction of a mortgage or other security interest in property."
 6

7 SECTION 2. Arkansas Code 8-7-408(c) is amended to read as follows:

8 "(c)(1) Response actions are not authorized when the director has
 9 reasonable assurance that the person responsible for a release or threatened
 10 release has committed to and is capable of initiating corrective and remedial
 11 action in a timely manner and that the actions will achieve results equivalent
 12 to the results from response action authorized in this section.

13 (2)(A) The director shall be deemed to not have reasonable
 14 assurance if the person responsible for a release or threatened release does
 15 not provide a written statement to the director within forty-eight (48) hours
 16 of service of process of the order.

17 (B) The written statement must express an intention to
 18 immediately comply with the terms of the order."
 19

20 SECTION 3. Arkansas Code 8-7-409(b) is amended to read as follows:

21 "(b) The order of the director may include, but is not limited to,
 22 requiring any person responsible in whole or in part for the release or
 23 threatened release, or any person in total or partial control of the site,
 24 facility, or transport vehicle from which the release or threatened release
 25 emanates ~~if that person has caused or contributed to the release or threatened~~
 26 ~~release, even if such named party is not the only ascertainable responsible~~
 27 party, to take such steps as are necessary to protect the public health and
 28 safety and the environment."
 29

30 SECTION 4. Arkansas Code 8-7-416 is amended to read as follows:

31 "8-7-416. Recovery of expenditures – Limitations.

32 (a) No person, including the state, may recover under the authority of
 33 this section, §§ 8-7-413–8-7-415, and 8-7-418 for any response costs or
 34 damages resulting from the application, in accordance with label directions,
 35 of a pesticide product registered under the Federal Insecticide, Fungicide,
 36 Rodenticide Act.

(b) No person, including the state, may recover under the authority of this section for any remedial action costs or damages ~~resulting solely from an act or omission of a third party or from an act of God or an act of war~~ from any person who establishes by a preponderance of the evidence that the release or threat of release and damages resulting therefrom were caused solely by:

(1) A natural disaster;

(2) An act of war;

(3) An act or omission of a third party, as defined in 8-7-403(a)(16), if the person establishes by a preponderance of the evidence that:

(A) Due care was exercised with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances; and

(B) Precautions were taken against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) Any combination of subdivisions (1), (2) or (3) of subsection (b) of this section.

(c) No person, including the state, may recover under the authority of this section for any remedial action costs or damages from any person who establishes by a preponderance of the evidence the following:

(1) That the person has satisfied the requirements of subdivision (b)(3)(A) and (B) of this section.

(2) That the real property on which the facility concerned is located was acquired by the person after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in subdivision (b)(1), (2) and (3) of this section is also established by the person by a preponderance of the evidence:

(A) At the time the person acquired the facility the person did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

(B) The person is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

1 (C) The person acquired the facility by inheritance or
2 bequest.

3 (3) To establish that the person had no reason to know, as
4 provided in 8-7-416(c)(2)(A), the person must have undertaken, at the time of
5 acquisition, all appropriate inquiry into the previous ownership and uses of
6 the property consistent with good commercial or customary practice in an
7 effort to minimize liability. For purposes of the preceding sentence the
8 court shall take into account any specialized knowledge or experience on the
9 part of the person, the relationship of the purchase price to the value of the
10 property if uncontaminated, commonly known or reasonably ascertainable
11 information about the property, the obviousness of the presence or likely
12 presence of contamination at the property, and the ability to detect such
13 contamination by appropriate inspection.

14 (d) Nothing in 8-7-416(b) or (c) shall diminish the liability of any
15 previous owner or operator of such facility who would otherwise be liable
16 under this section. Notwithstanding 8-7-416(c), if the person obtained actual
17 knowledge of the release or threatened release of a hazardous substance at
18 such facility when the person owned the real property and then subsequently
19 transferred ownership of the property to another person without disclosing
20 such knowledge, such person shall be treated as liable under this section and
21 no defense under section 8-7-416(b) or (c) of this section shall be available
22 to such person.

23 (e) Nothing in this section shall affect the liability of a person who,
24 by any act or omission, caused or contributed to the release or threatened
25 release of a hazardous substance which is the subject of the action relating
26 to the facility."

27
28 SECTION 5. All laws or parts of laws which are in conflict herewith are
29 hereby repealed to the extent of such conflict.

30
31 SECTION 6. If any provision of this act or the application thereof to
32 any person or circumstance is held invalid, such invalidity shall not affect
33 other provisions or applications of the act which can be given effect without
34 the invalid provision or application, and to this end the provisions of this
35 act are declared severable.

1 SECTION 7. All provisions of this act of a general and permanent
2 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
3 Code Revision Commission shall incorporate the same in the Code.