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2 82nd General Assembly
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A Bill

HOUSE BILL 1998

4
5 By: Representative Hathorn
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For An Act To Be Entitled

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9 "AN ACT TO AMEND ARKANSAS CODE 8-7-503, 8-7-508, 8-7-
10 512, AND 8-7-515 OF THE REMEDIAL ACTION TRUST FUND; TO
11 CLARIFY THE THIRD PARTY DEFENSE AND TO ADD AN INNOCENT
12 LANDOWNER DEFENSE; AND FOR OTHER PURPOSES."

Subtitle

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15 "TO AMEND ARKANSAS CODE 8-7-503, 8-7-508,
16 8-7-512, AND 8-7-515 OF THE REMEDIAL
17 ACTION TRUST FUND; TO CLARIFY THE THIRD
18 PARTY DEFENSE AND TO ADD AN INNOCENT
19 LANDOWNER DEFENSE."

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

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24 SECTION 1. Arkansas Code 8-7-503 is amended to read as follows:
25 "8-7-503. Definitions.

26 As used in this subchapter, unless the context otherwise requires:

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

29 (2) 'Commission' means the Arkansas Pollution Control and Ecology
30 Commission;

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

33 (4) 'Federal act' means the Comprehensive Environmental Response,
34 Compensation, and Liability Act of 1980, Public Law 96-510;

35 (5) 'Fund' means the Hazardous Substance Remedial Action Trust Fund
36 created by this subchapter;

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

4 (7) 'Releases of hazardous substances' means, for the purpose of this
5 subchapter, any spilling, leaking, pouring, emitting, emptying, discharging,
6 injecting, escaping, leaching, dumping, or disposing of hazardous substances
7 into the environment;

8 (8) 'Hazardous substance' means:

9 (A) As of March 21, 1985, any substance designated pursuant to
10 § 311(b)(2)(A) of the Federal Water Pollution Control Act (Public Law 92-500);
11 any element, compound, mixture, solution, or substance designated pursuant to
12 § 102 of Title I of the federal Comprehensive Environmental Response,
13 Compensation, and Liability Act of 1980 (Public Law 96-510); any hazardous
14 waste, including polychlorinated biphenyls, as defined by the Arkansas
15 Hazardous Waste Management Act, as amended, beginning at § 8-7-201 et seq.,
16 and the regulations promulgated thereunder; any toxic pollutant listed under §
17 307(a) of the Federal Water Pollution Control Act; any hazardous air pollutant
18 listed under § 112 of the federal Clean Air Act; and any hazardous chemical
19 substance or mixture regulated under § 7 of the federal Toxic Substances
20 Control Act; and

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

23 (9) 'Treatment', 'storage', 'disposal', 'generation', and 'hazardous
24 waste' shall have the meaning provided in § 3 of the Arkansas Hazardous Waste
25 Management Act, as amended, beginning at § 8-7-201 et seq., and the
26 regulations promulgated pursuant to this subchapter;

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

36 (10) 'Remedy' or 'remedial action' ('RA'):

1 (A) Means those actions consistent with a permanent remedy taken,
2 instead of or in addition to a removal action, in the event of a release or
3 threatened release of a hazardous substance into the environment, to prevent
4 or minimize the release of hazardous substances so they do not migrate to
5 cause substantial danger to present or future public health or welfare or the
6 environment.

7 (B) Includes, but is not limited to, actions at the location of
8 the release or threatened release such as storage, confinement, perimeter
9 protection using dikes, trenches, or ditches, clay cover, neutralization,
10 cleanup of released hazardous substances and associated contaminated
11 materials, recycling or reuse, diversion, destruction, segregation of reactive
12 wastes, dredging or excavations, repair or replacement of leaking containers,
13 collection of leachate and runoff, on-site treatment or incineration,
14 provision of alternative water supplies, any monitoring reasonably required to
15 assure that such actions protect the public health and welfare and the
16 environment and, where appropriate, post-removal site control activities.

17 (C) Includes the costs of:

18 (i) Permanent relocation of residents and businesses and
19 community facilities where the department determines that it is the preferable
20 alternative to the transportation, storage, treatment, destruction, or secure
21 disposition off-site of such hazardous substances, or may otherwise be
22 necessary to protect the public health or welfare;

23 (ii) Off-site transport and off-site storage, treatment,
24 destruction, or secure disposition of hazardous substances and associated
25 contaminated materials; and

26 (iii) Enforcement activities related thereto;

27 (11) 'Threatened release' means, for the purpose of this subchapter,
28 situation where a nonsudden release of hazardous substances can be reasonably
29 expected, unless prevented by change of operation or installation or
30 construction of containment or treatment devices or by removal or other
31 remedial action;

32 (12) 'Hazardous substance sites' means any sites or facilities where
33 hazardous substances have been disposed of or from which there is a release or
34 threatened release of hazardous substances;

35 (13) 'Third Party' means any person who is not an owner, operator,
36 transporter, generator, an employee or agent of an owner, operator,

1 transporter, generator, or a person whose act or omission occurs in connection
 2 with a contractual relationship existing directly or indirectly with an owner,
 3 operator, transporter or generator.

4 (14) 'Facility' shall have the meaning provided in § 8-7-203, and the
 5 regulations promulgated pursuant to the 'Arkansas Hazardous Waste Management
 6 Act of 1979' ;

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

12 (16) 'Owner' means any person who owns a facility or hazardous substance
 13 site or part of a facility or hazardous substance site."

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 15 SECTION 2. Section 8-7-508 is amended to read as follows:

16 "8-7-508. Remedial authority of the department.

17 (a)(1) Upon finding that a hazardous substance site exists or may exist,
 18 the department may, upon reasonable notice and after opportunity for hearing,
 19 issue an order to any person liable for the site under § 8-7-512, ~~if that~~
 20 ~~person has caused or contributed to the release or threatened release of~~
 21 ~~hazardous substances at the site.~~ This order shall require that such remedial
 22 actions be taken as are necessary to investigate, control, prevent, abate,
 23 treat, or contain any releases or threatened releases of hazardous substances
 24 from the site.

25 (2) A person shall not be deemed responsible for or to have caused
 26 or contributed to the release or threatened release of hazardous substances if
 27 such person merely provides financing or loans to another person or obtains
 28 title to property through foreclosure or through conveyance of property in
 29 total or partial satisfaction of a mortgage or other security interest in
 30 property.

31 (3) The fact that such a site is or is not listed by the
 32 commission pursuant to § 8-7-509(e) shall in no manner limit the authority of
 33 the department under this subchapter.

34 (b) The director or any employee or authorized agent of the department
 35 may enter upon any private or public property for the purpose of collecting
 36 information under this subchapter and for initiating and implementing remedial

1 actions.

2 (c) The director is authorized to initiate and implement remedial
3 actions under this subchapter pursuant to the provisions of § 8-7-509.

4 (d) The department, or any contractor of the department under this
5 section, in taking remedial actions pursuant to this subchapter shall not be
6 required to obtain any state or local permit for the portion of any response
7 or remedial action conducted pursuant to this subchapter entirely on site,
8 where the remedial action is otherwise carried out in compliance with the
9 regulations of the department.”

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11 SECTION 3. Arkansas Code 8-7-512(a)(1) is amended to read as follows:

12 “(a) Any of the following shall be liable to the state for all costs of
13 remedial actions under this subchapter:

14 (1) The owner and operator of a facility or hazardous substance
15 site;”

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17 SECTION 4. Arkansas Code 8-7-515 is amended to read as follows:

18 “8-7-515. Recovery of expenditures – Limitations.

19 (a) No person, including the state, may recover under the authority of
20 this section for any remedial action costs or damages resulting from the
21 application, in accordance with label directions of a pesticide product
22 registered under the Federal Insecticide, Fungicide, and Rodenticide Act.

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

28 (1) A natural disaster;

29 (2) An act of war;

30 (3) An act or omission of a third party if the person establishes
31 by a preponderance of the evidence that:

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

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

1 result from such acts or omissions; or

2 (4) Any combination of subdivisions (b)(1)-(3) of this section.

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

6 (1) That the person has satisfied the requirements of section 8-7-
 7 515(b)(3)(A) and (B) of this section.

8 (2) That the real property on which the facility concerned is
 9 located was acquired by the person after the disposal or placement of the
 10 hazardous substance on, in, or at the facility, and one or more of the
 11 following circumstances is also established by a preponderance of the
 12 evidence:

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

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

21 (C) The person acquired the facility by inheritance or
 22 bequest.

23 (3) To establish that the person had no reason to know, as
 24 provided in subdivision (c)(2)(A), the person must have undertaken, at the
 25 time of acquisition, all appropriate inquiry into the previous ownership and
 26 uses of the property consistent with good commercial or customary practice in
 27 an effort to minimize liability. For purposes of the preceding sentence the
 28 court shall take into account any specialized knowledge or experience on the
 29 part of the person, the relationship of the purchase price to the value of the
 30 property if uncontaminated, commonly known or reasonably ascertainable
 31 information about the property, the obviousness of the presence or likely
 32 presence of contamination at the property, and the ability to detect such
 33 contamination by appropriate inspection.

34 (d) Nothing in subdivision (b) or (c) shall diminish the liability of
 35 any previous owner or operator of such facility who would otherwise be liable
 36 under this section. Notwithstanding subdivision (c), if the person obtained

1 actual knowledge of the release or threatened release of a hazardous substance
2 at such facility when the person owned the real property and then subsequently
3 transferred ownership of the property to another person without disclosing
4 such knowledge, such person shall be treated as liable under this section and
5 no defense under subdivision (b) or (c) of this section shall be available to
6 such person.

7 (e) Nothing in this subsection shall affect the liability of a person
8 who, by any act or omission, caused or contributed to the release or
9 threatened release of a hazardous substance which is the subject of the action
10 relating to the facility."

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12 SECTION 5. All laws or parts of laws in conflict with this act are
13 repealed.

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15 SECTION 6. If any provision of this act or the application thereof to
16 any person or circumstance is held invalid, such invalidity shall not affect
17 other provisions or applications of the act which can be given effect without
18 the invalid provision or application, and to this end the provisions of this
19 act are declared severable.

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

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