

**Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.**

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001  
4

*As Engrossed: H3/20/01*

# A Bill

HOUSE BILL 2421

5 By: Representative Ledbetter  
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7

## **For An Act To Be Entitled**

9 AN ACT TO AMEND TITLE 8, CHAPTER 7, SUBCHAPTER 8  
10 OF THE ARKANSAS CODE, TO REQUIRE STORAGE TANK  
11 OWNERS TO COMPLETE AND SUBMIT TO THE DEPARTMENT  
12 OF ENVIRONMENTAL QUALITY A STORAGE TANK SELF-  
13 INSPECTION AUDIT; TO AMEND TITLE 8, CHAPTER 7,  
14 SUBCHAPTER 9 OF THE ARKANSAS CODE TO AMEND THE  
15 PETROLEUM STORAGE TANK TRUST FUND ELIGIBILITY  
16 CRITERIA FOR REIMBURSEMENT, CORRECTIVE ACTION AND  
17 THIRD-PARTY CLAIMS; AND FOR OTHER PURPOSES.

## **Subtitle**

19 REQUIRE STORAGE TANK OWNERS TO COMPLETE  
20 AND SUBMIT TO DEPARTMENT OF  
21 ENVIRONMENTAL QUALITY A STORAGE TANK  
22 SELF-INSPECTION AUDIT AND AMEND  
23 ELIGIBILITY CRITERIA FOR PETROLEUM  
24 STORAGE TANK TRUST FUND REIMBURSEMENT.  
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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30 SECTION 1. Arkansas Code 8-7-801 is amended to add an additional  
31 subsection to read as follows:

32 (13)(A) "Storage tank self-inspection audit" means a checklist or form  
33 issued by the department addressing the compliance status of a storage tank  
34 that the owner or operator completes on an annual basis.

35 (B) The storage tank self-inspection audit shall accompany or be  
36 a part of other documents the department requires the owner or operator to

1 execute on an annual basis.

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3 SECTION 2. Arkansas Code Title 8, Chapter 7, Subchapter 8 is amended  
4 by adding an additional section to read as follows:

5 8-7-815. Storage tank self-inspection audit.

6 (a) All owners and operators of storage tanks shall complete and  
7 submit an annual storage tank self-inspection audit in a manner and in  
8 accordance with a schedule determined by the department.

9 (b) The department shall implement requirements of this section in a  
10 manner that allows the storage tank self-inspection audit to accompany or be  
11 part of other documents the department requires to be submitted on an annual  
12 basis.

13 (c) The storage tank self-inspection audit is not encompassed by the  
14 environmental audit report privilege provided by § 8-1-301-312.

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16 SECTION 3. Arkansas Code 8-7-902(16) is amended as follows:

17 ~~(16) "Substantial compliance" means there is a reasonable assurance~~  
18 ~~that the owner or operator is in compliance with all state and federal laws~~  
19 ~~and regulations relating to storage tanks, including those related to~~  
20 ~~financial responsibility;~~

21 (A) "Storage tank self-inspection audit" means a checklist or form  
22 issued by the department addressing the compliance status of a storage tank  
23 that the owner or operator completes on an annual basis;

24 (B) The storage tank self-inspection audit shall accompany or be a  
25 part of other documents the department requires the owner or operator to  
26 execute on an annual basis;

27  
28 SECTION 4. Arkansas Code 8-7-907 is amended as follows:

29 8-7-907. Payments for corrective action.

30 (a) No payment for corrective action shall be paid from the Petroleum  
31 Storage Tank Trust Fund until the owner or operator has expended seven  
32 thousand five hundred dollars (\$7,500) on corrective action for the  
33 occurrence, except in cases where the Director of the Arkansas Department of  
34 Environmental Quality is using his emergency authority under § 8-7-905(e). It  
35 is the intent of the General Assembly that this initial level of expenditure  
36 be considered the equivalent of an insurance policy deductible. Owners or

1 operators of underground storage tanks must demonstrate financial  
2 responsibility for the seven-thousand-five-hundred-dollar deductible for  
3 corrective actions.

4 (b) Payment for corrective action shall not exceed one million dollars  
5 (\$1,000,000) per occurrence.

6 (c) All payments for corrective action expenses of the owner or  
7 operator shall be made only following proof that:

8 ~~(1) Corrective action has adequately addressed the release and~~  
9 ~~the release is no longer a threat to public health and safety or the~~  
10 ~~environment;~~

11 ~~(2) (1) At the time of discovery of the release, the owner or~~  
12 ~~operator had paid all fees required under state law or regulations applicable~~  
13 ~~to petroleum storage tanks;~~

14 ~~(3) (2) At the time of the occurrence, the owner or operator was~~  
15 ~~in substantial compliance, as defined by this subchapter and regulations~~  
16 ~~promulgated thereunder, with all state and federal laws and regulations~~  
17 ~~relating to storage tanks, including those relating to financial~~  
18 ~~responsibility; and The corrective action expenses submitted for~~  
19 ~~reimbursement consist of items and amounts that are in accord and compliant~~  
20 ~~with Arkansas Department of Environmental Quality regulations;~~

21 ~~(4) (3) The Arkansas Department of Environmental Quality was~~  
22 ~~given timely notice of the release and the owner or operator cooperated fully~~  
23 ~~with the department The owner or operator cooperated fully with the Arkansas~~  
24 ~~Department of Environmental Quality in corrective action to address the~~  
25 ~~release; and~~

26 ~~(4) The owner or operator submits a storage tank self-inspection~~  
27 ~~audit as required by § 8-7-815.~~

28 ~~(d) Payment for corrective action may be denied if the storage tank~~  
29 ~~owner or operator fails to report a release as required by regulation~~  
30 ~~promulgated by the Arkansas Pollution Control and Ecology Commission and the~~  
31 ~~failure to report the release causes a delay in the corrective action that~~  
32 ~~contributes to an adverse impact to the environment.~~

33 ~~(e) Payment for corrective action may be denied if the storage tank~~  
34 ~~owner or operator submits an inaccurate storage tank self-inspection audit,~~  
35 ~~which results in a delay in the corrective action of a release and the delay~~  
36 ~~contributes to an adverse impact to the environment.~~

1 ~~(d)~~ (f) (1) The Arkansas Pollution Control and Ecology Commission may  
 2 provide through rule and regulation for interim payments for corrective  
 3 action.

4 (2) Interim payments shall be subject to these limitations:

5 (A) Proof of compliance with the requirements of  
 6 subdivisions (c) ~~(2)~~ (1)-(4) of this section must be provided;

7 (B) Specific assurances must be provided that an approved  
 8 corrective action plan, department directive, or order is being implemented  
 9 and followed to date; and

10 (C) Interim payments shall consist of payment of an amount  
 11 not to exceed ninety percent (90%) of reimbursable expenditures to date. The  
 12 remaining ten percent (10%) shall be released only upon final payment for  
 13 corrective action concerning the occurrence.

14 ~~(e)~~ (g) ~~In the event moneys are expended from the fund for corrective~~  
 15 ~~action and the owner or operator was not at the time of the occurrence in~~  
 16 ~~substantial compliance, as defined by this subchapter and regulations~~  
 17 ~~promulgated hereunder, the department may recover from the owner or operator~~  
 18 ~~the amount of moneys expended from the fund for the corrective action by~~  
 19 ~~filing an action in the appropriate circuit court or by using the~~  
 20 ~~administrative procedures set forth in § 8-7-804.~~ In the event moneys are  
 21 expended from the fund for corrective action and the owner or operator was  
 22 not at the time of the occurrence eligible to receive reimbursement for  
 23 corrective action, as defined by this subchapter and regulations promulgated  
 24 under this subchapter, the department may recover from the owner or operator  
 25 the amount of moneys expended from the fund for corrective action by filing  
 26 an action in the appropriate circuit court or by using the administrative  
 27 procedures set forth in § 8-7-804.

28 ~~(f)~~ (h) (1) Unknown petroleum storage tanks that have satisfied the  
 29 requirements of subdivisions (c)(1) and (c)(4) of this section shall be  
 30 eligible for reimbursement for corrective action as provided by this section  
 31 if:

32 (A) The unknown petroleum storage tank is discovered while  
 33 removing, upgrading, or replacing a petroleum storage tank meeting the  
 34 requirements of subsection (c) of this section or while performing petroleum  
 35 investigation or corrective action activities required by federal or state  
 36 laws and the petroleum storage tank meeting the requirements of subsection

1 (c) of this section is located on the same property or facility; or

2 (B) The unknown petroleum storage tank is located on a  
3 right-of-way purchased by a city, county, or state governmental agency or  
4 entity and is discovered during construction in such right-of-way.

5 (2) Eligibility for reimbursement of unknown petroleum storage  
6 tanks will be conditioned on the payment of three hundred seventy-five  
7 dollars (\$375) to the department.

8  
9 SECTION 5. Arkansas Code 8-7-907 is amended by adding an additional  
10 subsection to read as follows:

11 (i) If the owner or operator is found to have been in non-compliance  
12 with any state and federal laws and regulations relating to storage tanks, at  
13 the time of the occurrence, the Arkansas Department of Environmental Quality  
14 may assess a penalty in accordance with its applicable policies and  
15 procedures.

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17 SECTION 6. EMERGENCY CLAUSE.

18 It is hereby found and determined by the 83rd General Assembly that  
19 under present law a requirement for Petroleum Storage Tank Trust Fund  
20 eligibility is substantial compliance with applicable federal and state  
21 requirements. This eligibility requirement poses two significant problems.  
22 First, a storage tank owner or operator found ineligible for the Petroleum  
23 Storage Tank Trust Fund reimbursement is in reality penalized tens of  
24 thousands of dollars that are typically expended on investigation and/or  
25 remediation of petroleum releases. Second, the difficulty specifying the  
26 type of conduct that constitutes substantial compliance generates uncertainty  
27 as to whether the Petroleum Storage Tank Trust Fund will be available to  
28 owners or operators of such equipment. Consequently, it has been determined  
29 that instead of judging trust fund eligibility on the basis of substantial  
30 compliance, requiring owners and operators of storage tanks to annually  
31 complete and submit to the department self-inspection audits will better  
32 enhance environmental protection. Therefore, an emergency is declared to  
33 exist and this act being immediately necessary for the preservation of the  
34 public peace, health and safety shall become effective on the date of its  
35 approval by the Governor. If the bill is neither approved nor vetoed by the  
36 Governor, it shall become effective on the expiration of the period of time

1 during which the Governor may veto the bill. If the bill is vetoed by the  
2 Governor and the veto is overridden, it shall become effective on the date  
3 the last house overrides the veto.

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*/s/ Ledbetter*