

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 85th General Assembly
3 Regular Session, 2005

A Bill

HOUSE BILL 2648

4
5 By: Representative Ledbetter
6
7

For An Act To Be Entitled

8
9 AN ACT TO AMEND THE ARKANSAS HAZARDOUS WASTE
10 MANAGEMENT ACT; TO REPEAL ARKANSAS CODE TITLE 8,
11 CHAPTER 7, SUBCHAPTERS 4 AND 5; TO ENACT THE
12 ARKANSAS ENVIRONMENTAL RESPONSE AND LIABILITY
13 ACT; AND FOR OTHER PURPOSES.
14

Subtitle

15
16 THE ARKANSAS ENVIRONMENTAL RESPONSE AND
17 LIABILITY ACT.
18
19

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

22 SECTION 1. Arkansas Code § 8-4-103(f)(2), concerning the penalties
23 collected for violations of the Arkansas Water and Air Pollution Control Act,
24 is amended to read as follows:

25 (2) All moneys collected as civil penalties shall be deposited
26 in the ~~Emergency Response Fund~~ Arkansas Environmental Response and Liability
27 Trust Fund as provided by ~~§ 8-7-410~~ § 8-7-1310.
28

29 SECTION 2. Arkansas Code § 8-6-204(e)(2), concerning the penalties
30 collected for violations of the Arkansas Solid Waste Management Act is
31 amended to read as follows:

32 (2) All moneys collected as civil penalties pursuant to this
33 section shall be deposited in the ~~Emergency Response Fund~~ Arkansas
34 Environmental Response and Liability Trust Fund as provided by ~~§ 8-7-410~~ § 8-
35 7-1310.
36



1 SECTION 3. Arkansas Code § 8-7-202 is amended to read as follows:
 2 8-7-202. Purpose.

3 It is the purpose of this subchapter and it is declared to be the
 4 policy of this state to:

5 (1) Protect the public health and safety, the health of living
 6 organisms, and the environment from the effects of the improper, inadequate,
 7 or unsound management of hazardous wastes;

8 (2) Establish a program of regulation over the generation,
 9 storage, transportation, treatment, and disposal of hazardous wastes;

10 (3) Assure the safe and adequate management of hazardous wastes
 11 within this state;

12 (4) Qualify the Arkansas Department of Environmental Quality to
 13 adopt, administer, and enforce a hazardous waste program pursuant to the
 14 federal Resource Conservation and Recovery Act of 1976, as it existed on
 15 January 1, 2005; and

16 (5) Afford the people of the State of Arkansas a voice in the
 17 permitting of hazardous waste facilities within their respective counties;
 18 and

19 (6) Clarify the intent of the General Assembly that:

20 (A) This subchapter is a remedial statute; and

21 (B) The provisions of this subchapter shall apply to acts
 22 that occurred before the effective date of this subchapter.

23
 24 SECTION 4. Arkansas Code § 8-7-203 is amended to read as follows:
 25 8-7-203. Definitions.

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

27 (1) "Commission" means the Arkansas Pollution Control and
 28 Ecology Commission;

29 (2) "Department" means the Arkansas Department of Environmental
 30 Quality or its successor;

31 (3) "Director" means the Director of the Arkansas Department of
 32 Environmental Quality or its successor;

33 (4) "Disposal" means the discharge, deposit, injection, dumping,
 34 spilling, leaking, or placing of any hazardous waste into or on any land or
 35 water in whatever manner so that such hazardous waste or any constituent
 36 thereof might or might not enter the environment or be emitted into the air

1 or discharged into any waters including groundwaters;

2 (5) "Facility" means any land and appurtenances thereon and
 3 thereto used for the treatment, storage, or disposal of hazardous waste;

4 (6) "Generation" means the act or process of producing waste
 5 materials;

6 (7) "Hazardous waste" means any waste or combination of wastes
 7 of a solid, liquid, contained gaseous, or semisolid form which, because of
 8 its quantity, concentration, or physical, chemical, or infectious
 9 characteristics, may in the judgment of the department:

10 (A) Cause or significantly contribute to an increase in
 11 mortality or an increase in serious irreversible or incapacitating reversible
 12 illness; or

13 (B) Pose a substantial present or potential hazard to
 14 human health or the environment when improperly treated, stored, transported,
 15 or disposed of, or otherwise improperly managed. Such wastes include, but are
 16 not limited to, those which are radioactive, toxic, corrosive, flammable,
 17 irritants, or strong sensitizers or those which generate pressure through
 18 decomposition, heat, or other means;

19 (8) "Hazardous waste management" means the systematic control of
 20 the generation, collection, distribution, marketing, source separation,
 21 storage, transportation, processing, recovery, disposal, and treatment of
 22 hazardous waste;

23 (9) "Manifest" means the form used for identifying the quantity,
 24 composition, and the origin, routing, and destination of hazardous waste
 25 during its transport;

26 (10) "Person" means any individual, corporation, company, firm,
 27 partnership, association, trust, joint-stock company, state agency,
 28 government instrumentality or agency, institution, county, city, town, or
 29 municipal authority or trust, venture, or any other legal entity, however
 30 organized;

31 (11) "Site" means any real property located within the boundary
 32 of the State of Arkansas contemplated or later acquired for the purpose of,
 33 but not limited to, landfills or other facilities to be used for treatment,
 34 storage, disposal, or generation of hazardous wastes;

35 (12)(A) "Solid waste management unit" means any discernible unit
 36 at which solid wastes have been placed at any time, irrespective of whether

1 the unit was intended for the management of solid or hazardous wastes.

2 (B) The units include any area at a facility at which
 3 solid wastes have been routinely or systematically released;

4 ~~(12)(A)~~(13)(A) "Storage" means the containment of hazardous
 5 wastes, either on a temporary basis or for a period of years, in such a
 6 manner as not to constitute disposal of hazardous wastes.

7 (B) Storage by means of burial shall be deemed to
 8 constitute disposal within the meaning of this subchapter;

9 ~~(13)~~(14) "Transport" means the movement of wastes from the point
 10 of generation to any intermediate points and finally to the point of ultimate
 11 storage or disposal;

12 ~~(14)~~(15) "Treatment" means any method, technique, or process,
 13 including neutralization, designed to change the physical, chemical, or
 14 biological character or composition of any hazardous waste so as to
 15 neutralize the waste or to render the waste less hazardous, safer for
 16 transport, amenable to recovery, amenable to storage, amenable to disposal,
 17 or reduced in volume; and

18 ~~(15)~~(16) "Treatment facility" means a location at which waste is
 19 subjected to treatment and may include a facility where waste has been
 20 generated.

21
 22 SECTION 5. Arkansas Code § 8-7-204(e)(2), concerning the penalties
 23 collected for violations of the Arkansas Hazardous Waste Management Act of
 24 1979, is amended to read as follows:

25 (2) All moneys collected as civil penalties pursuant to this
 26 section shall be deposited in the ~~Emergency Response Fund~~ Arkansas
 27 Environmental Response and Liability Trust Fund as provided by ~~§ 8-7-410~~ § 8-
 28 7-1310.

29
 30 SECTION 6. Arkansas Code § 8-7-209(a), concerning the powers and
 31 duties of the Arkansas Department of Environmental Quality, is amended to
 32 read as follows:

33 (a) The Arkansas Department of Environmental Quality ~~shall have~~ has
 34 the following powers and duties:

35 (1) To administer and enforce all laws, rules, and regulations
 36 regarding hazardous waste management;

1 (2) To conduct and publish such studies of hazardous waste
2 management in this state as shall be deemed appropriate, including, but not
3 limited to:

4 (A) A description of the sources of hazardous waste
5 generated within the state;

6 (B) Information regarding the types and quantities of such
7 waste; and

8 (C) A description of current hazardous waste management
9 practices and costs including treatment, recovery, and disposal;

10 (3) To develop, publish, and implement plans in accordance with
11 the provisions of this subchapter for the safe and effective management of
12 hazardous wastes within this state, including, but not limited to:

13 (A) The establishment of criteria for the identification
14 of those locations within the state which are suitable for establishment of
15 hazardous waste treatment or disposal facilities or sites; and

16 (B) Those locations which are not suitable for such
17 purposes;

18 (4) To establish criteria for determination of whether any waste
19 or combination of wastes is hazardous for purposes of this subchapter and to
20 identify and specify wastes or combination of wastes as being hazardous;

21 (5) To issue, continue in effect, revoke, modify, or deny, under
22 such conditions as it may prescribe, permits for the establishment,
23 construction, operation, or maintenance of hazardous waste treatment,
24 storage, or disposal facilities or sites, as more particularly prescribed by
25 §§ 8-7-215 - 8-7-222;

26 (6) To make such investigations and inspections and to hold such
27 hearings, after notice, as it may deem necessary or advisable for the
28 discharge of its duties under this subchapter and to ensure compliance with
29 this subchapter and any orders, rules, and regulations issued pursuant
30 thereto;

31 (7) To make, issue, modify, revoke, and enforce orders, after
32 notice and hearing, prohibiting violation of any of the provisions of this
33 subchapter or of any rules and regulations issued pursuant thereto or any
34 permit issued thereunder, and requiring the taking of such remedial measures
35 as may be necessary or appropriate to implement or effectuate the provisions
36 and purposes of this subchapter;

1 (8)(A) To institute proceedings in the name of the department in
 2 any court of competent jurisdiction to compel compliance with and to restrain
 3 any violation of the provisions of this subchapter or any rules, regulations,
 4 and orders issued pursuant thereto or any permit issued thereunder, and
 5 require the taking of such remedial measures as may be necessary or
 6 appropriate to implement or effectuate the provisions and purposes of this
 7 subchapter.

8 (B) In any civil action in which a temporary restraining
 9 order, preliminary injunction, or permanent injunction is sought, it shall
 10 not be necessary to allege or prove at any stage of the proceeding that
 11 irreparable damage will occur should the requested relief not be granted, nor
 12 that the remedy at law is inadequate;

13 (9) To initiate, conduct, and support research, demonstration
 14 projects, and investigations, and coordinate all state agency research
 15 programs pertaining to hazardous waste management, and establish technical
 16 advisory committees to assist in the development of procedures, standards,
 17 criteria, and rules and regulations, the members of which may be reimbursed
 18 for travel expenses in accordance with § 25-16-901 et seq.;

19 (10) To establish policies and standards for effective hazardous
 20 waste management;

21 (11) To establish standards and procedures for the certification
 22 of personnel to operate hazardous waste treatment or disposal facilities or
 23 any commercial hazardous waste management facilities; ~~and~~

24 (12)(A)(i) To require in any permit issued under this subchapter
 25 corrective action for all releases of hazardous wastes or their constituents
 26 from any solid waste management unit at a treatment, storage, or disposal
 27 facility, regardless of the time the waste was placed in the unit.

28 (ii) Permits issued under this subchapter shall
 29 contain:

30 (a) Schedules of compliance for the corrective
 31 actions, if the actions cannot be completed before the issuance of the
 32 permit; and

33 (b) Assurances of financial responsibility for
 34 completing the corrective actions.

35 (B) The corrective action component of the permit shall
 36 also require that corrective action be taken beyond the facility boundary if

1 necessary to protect human health or the environment unless the owner or
 2 operator of the facility concerned demonstrates to the satisfaction of the
 3 director that, despite the owner or operator's best efforts, the owner or
 4 operator was unable to obtain the necessary permission to undertake the
 5 action; and

6 ~~(12)~~(13) In addition to the powers enumerated above, the
 7 department shall have and may use in the administration and enforcement of
 8 this subchapter all of the powers which it has under other laws administered
 9 by it, including the Arkansas Water and Air Pollution Control Act, § 8-4-101
 10 et seq., and the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

11
 12 SECTION 7. Arkansas Code § 8-7-211 is amended to read as follows:
 13 8-7-211. Variances, waivers, or extensions.

14 (a)(1) Where If the application of or compliance with any rule or
 15 regulation issued under this subchapter, in the judgment of the Arkansas
 16 Pollution Control and Ecology Commission, would cause undue or unreasonable
 17 hardship to any person and not cause substantially adverse environmental
 18 effects, the commission may grant a variance, waiver, or extension to the
 19 same extent that ~~such~~ the variance, waiver, or extension would be allowable
 20 under the federal Resource Conservation and Recovery Act of 1979, as it
 21 existed on January 1, 2005, and the regulations promulgated ~~thereunder~~ under
 22 that act.

23 ~~(2) In no case shall~~ Except as provided in subsection (b) of
 24 this section, the duration of any such variance shall not exceed one (1)
 25 year.

26 (3) Renewals or extensions may be given only after opportunity
 27 for public comment on each such renewal or extension.

28 (b)(1) If a waiver granted under subsection (a) of this section has
 29 been incorporated into a final permit issued under the provisions of this
 30 subchapter, the waiver shall be valid for the remainder of the term of the
 31 permit, not to exceed ten (10) years.

32 (2) Upon renewal of the permit, the waiver shall be subject to
 33 reevaluation and renewal in the same manner as set out in subsection (a) of
 34 this section.

35
 36 SECTION 8. Arkansas Code § 8-7-214 is amended to read as follows:

1 8-7-214. Orders of the Director -- Emergency order for imminent hazard
 2 -- Interim status corrective action order.

3 (a)(1) Notwithstanding any other provisions of this subchapter, the
 4 Director of the Arkansas Department of Environmental Quality, upon finding
 5 that the storage, transportation, treatment, or disposal of any waste may
 6 present an imminent and substantial hazard to the health of persons or to the
 7 environment and that an emergency exists requiring immediate action to
 8 protect the public health and welfare, he may, without notice or hearing,
 9 issue an emergency order reciting the existence of such an imminent hazard
 10 and emergency and requiring that such action be taken as he determines to be
 11 necessary to protect the health of such persons or the environment and to
 12 meet the emergency.

13 (2) The emergency order of the director may include, but is not
 14 limited to, directing the operator of the treatment or disposal facility or
 15 site or the custodian of the waste ~~which~~ that constitutes the hazard to take
 16 such steps as are necessary to prevent the act or eliminate the practice
 17 ~~which~~ that constitutes the hazard and, with respect to a facility or site,
 18 may order cessation of operation.

19 (b)(1) If on the basis of any information the director determines that
 20 there is or has been a release of hazardous waste into the environment from a
 21 facility that is, was, or should have been authorized to operate under
 22 interim operating authority of this subchapter, the director may:

23 (A) Issue an interim status corrective order requiring
 24 corrective action or such other response measure as he deems necessary to
 25 protect human health or the environment; or

26 (B) Commence a civil action in the circuit court in the
 27 county in which the facility is located for appropriate relief, including a
 28 temporary or permanent injunction.

29 (2) Any interim status corrective action order issued by the
 30 director:

31 (A) May include a suspension or revocation of
 32 authorization to operate under § 8-7-215; and

33 (B) Shall:

34 (i) State with reasonable specificity the nature of
 35 the required corrective action or other response measure; and

36 (ii) Specify a time for compliance.

1 ~~(b)(1)(c)(1)~~ Any person to whom ~~the~~ an order issued under this section
 2 is directed shall comply with it immediately, but, on written application to
 3 the ~~director~~ Arkansas Pollution Control and Ecology Commission within ten
 4 (10) days ~~of~~ after the issuance of the order, that person shall be afforded a
 5 hearing before the ~~Arkansas Pollution Control and Ecology Commission~~
 6 commission within ten (10) days after ~~receipt of~~ filing the written request.

7 (2) On the basis of the hearing, the commission shall continue
 8 the order in effect or shall revoke or modify it.

9
 10 SECTION 9. Arkansas Code § 8-7-217 is amended to read as follows:

11 8-7-217. Permits - Notice of hearing.

12 (a) No permit shall be issued by the Arkansas Department of
 13 Environmental Quality or the Arkansas Pollution Control and Ecology
 14 Commission for any commercial hazardous waste treatment, storage, or disposal
 15 facility unless ~~thirty (30)~~ forty-five (45) days' advance notice of a hearing
 16 has been placed in the largest newspaper published in the county in which a
 17 facility or facilities are located or proposed to be located, as well as
 18 published in the largest newspaper published in the adjoining counties.

19 (b) If there is no newspaper published in any of the counties so
 20 affected, the notice shall be published in the newspaper having the largest
 21 circulation in the county.

22
 23 SECTION 10. Arkansas Code § 8-7-218 is amended to read as follows:

24 8-7-218. Permits - Compliance with subchapter, state and federal
 25 standards, regulations, etc.

26 (a) No permits shall be issued by the Arkansas Department of
 27 Environmental Quality for any facility unless the department, after
 28 opportunity for public comment, has determined that the facility has been
 29 designed and will be operated in such manner that any emission from the
 30 facility will comply with the provisions of this subchapter and all
 31 applicable state and federal standards and regulations concerning air and
 32 water quality and that the transfer, handling, and storage of materials
 33 within the facility will not cause conditions which would violate state and
 34 federal standards concerning worker safety or create unreasonable hazards to
 35 the environment or to the health and welfare of the people living and working
 36 in or near the facility.

1 (b)(1) No permit shall be issued by the department for any commercial
 2 disposal or storage facility off the site where the hazardous waste is
 3 generated until the department has adopted rules, regulations, standards, and
 4 procedures pursuant to § 8-7-209.

5 (2) The rules, regulations, standards, procedures, or other
 6 requirements adopted and imposed by the department shall not be less
 7 stringent than the regulations promulgated or revised by the Environmental
 8 Protection Agency pursuant to the federal Resource Conservation and Recovery
 9 Act of 1976, as it existed on January 1, 2005.

10 (c) No permit shall be issued for hazardous waste treatment, storage,
 11 or disposal facilities except under the terms of regulations of the
 12 department which conform to the provisions of § 3005 of the federal Resource
 13 Conservation and Recovery Act, as it existed on January 1, 2005.

14
 15 SECTION 11. Arkansas Code Title 8, Chapter 7, Subchapter 4 is
 16 repealed.

17
 18 SECTION 12. Arkansas Code Title 8, Chapter 7, Subchapter 5 is
 19 repealed.

20
 21 SECTION 13. Arkansas Code § 8-7-1102(a), providing definitions for the
 22 Voluntary Cleanup Act, is amended to read as follows:

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

24 (1) "Abandoned site" means a site on which industrial,
 25 commercial, or agricultural activity occurred and for which no responsible
 26 person can reasonably be pursued for a remedial response to clean up the
 27 site, or when the Arkansas Department of Environmental Quality determines it
 28 is in the best interest of the citizens of Arkansas to promote redevelopment
 29 under this subchapter while continuing to pursue the responsible party or
 30 parties;

31 (2) "Implementing agreement" means a plan, order, memorandum of
 32 agreement, or other enforceable document issued by the department under
 33 provisions of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201
 34 et seq., ~~the Remedial Action Trust Fund Act, § 8-7-501 et seq.~~ Arkansas
 35 Environmental Response and Liability Act, § 8-7-1301 et seq., or this
 36 subchapter, to implement the voluntary cleanup process described in § 8-7-

1 1104;

2 (3) "Industrial, commercial, or agricultural activity" means
 3 commercial, manufacturing, agricultural, or any other activity done to
 4 further either the development, manufacturing, or distribution of goods and
 5 services, as well as soil cultivation and crop or livestock production,
 6 including, but not limited to, research and development, warehousing,
 7 shipping, transport, remanufacturing, repair, and maintenance of commercial
 8 machinery and equipment;

9 (4) "Property" means property and improvements, including:

10 (A) A facility as defined in the Comprehensive
 11 Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §
 12 9601(9); and

13 (B) A site as defined in § 8-7-203(11);

14 (5) "Prospective purchaser" means a person who expresses a
 15 willingness to acquire an abandoned site and is not responsible for any
 16 preexisting pollution at or contamination on the site; and

17 (6)(A) "Site assessment" means the site assessment to establish
 18 the baseline level of existing contamination on a site.

19 (B) The assessment shall identify, at a minimum, the
 20 location and extent of contamination, the quantity or level of contamination,
 21 the type of contamination, the probable source of contamination, and the risk
 22 or threat associated with the contamination as described in § 8-7-1104.

23 (C) The assessment also shall include a description of the
 24 intended land use of the site.

25

26 SECTION 14. Arkansas Code § 8-7-1104(a), concerning the voluntary
 27 cleanup process in the Voluntary Cleanup Act, is amended to read as follows:

28 (a) This section applies:

29 (1) To a person who:

30 (A) Is a prospective purchaser of an abandoned industrial,
 31 commercial, or agricultural property with known or suspected contamination;

32 (B) Did not by act or omission cause or contribute to any
 33 release or threatened release of a hazardous substance on or from the
 34 identified abandoned site or is otherwise considered to be a responsible
 35 party pursuant to ~~§ 8-7-512(a)(2)-(4)~~ § 8-7-1313(a)(2)-(4); and

36 (C) Will reuse or redevelop the property for industrial,

1 commercial, or agricultural activities which will sustain or create
 2 employment opportunities or otherwise augment the local or state economy and
 3 tax base, or both; or

4 (2) To a person who:

5 (A) Is not a responsible party ~~pursuant to § 8-7-~~
 6 ~~512(a)(2)-(4)~~ under § 8-7-1313(a)(2)-(4);

7 (B) Submits a Letter of Intent to Participate; and

8 (C) Subsequently acquires title to an abandoned site prior
 9 to completion of an implementing agreement as set forth in subsection (d) of
 10 this section.

11
 12 SECTION 15. Arkansas Code Title 8, Chapter 7 is amended to add an
 13 additional subchapter to read as follows:

14 8-7-1301. Title.

15 This subchapter shall be known and may be cited as the "Arkansas Environmental
 16 Response and Liability Act".

17
 18 8-7-1302. Legislative intent.

19 (a) It is the intent of the General Assembly to provide the State of Arkansas with the
 20 necessary funds and authority to investigate, control, prevent, abate, treat, or contain releases
 21 or threatened releases of hazardous substances or pollutants or contaminants causing a
 22 significant environmental threat to public health or the environment, including establishing funds
 23 required to assure payment of the state's participation in response actions under the federal
 24 Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and to
 25 encourage the reduction of hazardous waste generation.

26 (b) The purposes of this subchapter are to:

27 (1) Encourage privately funded response action and to clarify that persons that
 28 have undertaken response action at an environmental response site in response to an action
 29 initiated by the Arkansas Department of Environmental Quality pursuant to § 8-7-1307 or § 8-7-
 30 1308 may obtain contribution from any other person that is liable for remediation of the
 31 environmental response site;

32 (2)(A) Clarify the General Assembly's intent to provide the department with the
 33 necessary funds for response actions at an environmental response site, recognizing that both
 34 public and private funds must be expended to implement response actions at the environmental
 35 response sites that exist in this state.

36 (B) Costs and expenses for response action, whether expended by the

1 department or by any person liable for the environmental response site, are legal damages to
 2 persons liable to the state and to persons liable to any other person for contribution, whether the
 3 liability arises by voluntary compliance with this subchapter pursuant to an order from or
 4 settlement with the department, or by suit for injunctive relief, declaratory judgment,
 5 contribution, damages, or restitution, and whether a suit is brought by the state or by any party
 6 authorized to bring a suit for relief under this subchapter:

7 (3) Provide the State of Arkansas with the authority necessary to protect the
 8 public health, safety, and welfare and the environment from releases or threatened releases of
 9 hazardous substances or pollutants or contaminants causing a significant environmental threat to
 10 public health or the environment:

11 (4) Clarify the intent of the General Assembly with regard to the liability of
 12 responsible parties that this subchapter is a remedial statute and that the provisions of this
 13 subchapter shall apply to acts that occurred before the effective date of this subchapter:

14 (5) Provide emergency response capabilities necessary to promptly contain,
 15 control, or remove hazardous substances or pollutants or contaminants causing a significant
 16 environmental threat resulting from spills or releases; and

17 (6) Repeal and replace the Emergency Response Fund Act and the Remedial
 18 Action Trust Fund Act.

19
 20 8-7-1303. Definitions.

21 As used in this subchapter:

22 (1) "Act of nature" means an unanticipated grave natural disaster or other
 23 natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which
 24 could not have been prevented or avoided by the exercise of due care or foresight:

25 (2)(A) "All appropriate inquiry" means a site assessment to
 26 establish the baseline level of existing contamination on a site that shall,
 27 at a minimum, identify:

- 28 (i) The location and extent of contamination,
- 29 (ii) The quantity or level of contamination,
- 30 (iii) The type of contamination,
- 31 (iv) The probable source of contamination, and
- 32 (v) The risk or threat associated with the
 33 contamination as described in § 8-7-1104.

34 (B) In the case of property in residential use or other
 35 similar use at the time of purchase by a nongovernmental or noncommercial
 36 entity, a facility inspection and title search that reveal no basis for

1 further investigation shall be considered to satisfy the requirements of all
2 appropriate inquiry;

3 (3) "Commission" means the Arkansas Pollution Control and
4 Ecology Commission;

5 (4)(A) "Contractual relationship" includes, but is not limited
6 to:

7 (i) Business transactions; and

8 (ii) Land contracts, deeds, easements, leases, or
9 other instruments transferring title or possession.

10 (B) "Contractual relationship" does not include a
11 situation in which:

12 (i) The real property on which the facility
13 concerned is located was acquired by a defendant after the disposal or
14 placement of the hazardous substance or the pollutant or contaminant on, in,
15 or at the facility; and

16 (ii) One (1) or more of the circumstances described
17 in subdivision (4)(C) of this section is established by the defendant by a
18 preponderance of the evidence.

19 (C)(i)(a) At the time the defendant acquired the facility
20 the defendant did not know and had no reason to know that any hazardous
21 substance or any pollutant or contaminant that is the subject of the release
22 or threatened release was disposed of on, in, or at the facility;

23 (b) To establish that the defendant had no
24 reason to know of the matter described in subdivision (C)(i)(a), the
25 defendant shall demonstrate to a court that:

26 (1) On or before the date on which the
27 defendant acquired the facility, the defendant carried out all appropriate
28 inquiries into the previous ownership and uses of the facility in accordance
29 with generally accepted good commercial and customary standards and
30 practices; and

31 (2) The defendant took reasonable steps
32 to:

33 (A) Stop any continuing release;

34 (B) Prevent any threatened future
35 release; and

36 (C) Prevent or limit any human,

1 environmental, or natural resource exposure to any previously released
 2 hazardous substance or pollutant or contaminant;

3 (ii) The defendant is a government entity that
 4 acquired the facility by escheat, or through any other involuntary transfer
 5 or acquisition, or through the exercise of eminent domain authority by
 6 purchase or condemnation; or

7 (iii) The defendant acquired the facility by
 8 inheritance or bequest.

9 (iv) In addition to establishing one (1) or more of
 10 the circumstances described in subdivision (4)(C)(i) -(iii) of this section,
 11 the defendant shall establish that the defendant

12 (a) Has satisfied the requirements of § 8-7-
 13 1313(c)(3)(A) and (B);

14 (b) Provides full cooperation, assistance, and
 15 facility access to the persons that are authorized to conduct response
 16 actions at the facility, including the cooperation and access necessary for
 17 the installation, integrity, operation, and maintenance of any complete or
 18 partial response action at the facility;

19 (c) Is in compliance with any land use
 20 restrictions established or relied on in connection with the response action
 21 at the facility, and

22 (d) Does not impede the effectiveness or
 23 integrity of any institutional control employed at the facility in connection
 24 with a response action;

25 (5) “Department” means the Arkansas Department of Environmental
 26 Quality;

27 (6) “Director” means the Director of the Arkansas Department of
 28 Environmental Quality;

29 (7) “Disposal” means the discharge, deposit, injection, dumping,
 30 spilling, leaking, or placing of any hazardous waste, pollutant, contaminant,
 31 or other constituent into or on any land or water in whatever manner so that
 32 the hazardous waste, pollutant, contaminant, or other constituent might or
 33 might not enter the environment or be emitted into the air or discharged into
 34 any waters including groundwaters;

35 (8) “Environmental response site” means any site or facility
 36 where hazardous substances or pollutants or contaminants have been disposed

1 of or from which there is a release or threatened release of a hazardous
 2 substance or a pollutant or contaminant;

3 (9) "Due care" means taking reasonable steps to:

4 (A) Stop any continuing release;

5 (B) Prevent any threatened future release; and

6 (C) Prevent or limit any human, environmental, or natural
 7 resource exposure to any previously released hazardous substance or pollutant
 8 or contaminant;

9 (10)(A) "Facility" means:

10 (i) Any building, structure, installation,
 11 equipment, pipe or pipeline, including any pipe into a sewer or publicly
 12 owned treatment works, well, pit, lagoon, impoundment, ditch, landfill,
 13 storage container, motor vehicle, rolling stock, or aircraft; or

14 (ii) Any site or area where a hazardous substance or
 15 a pollutant or contaminant has been deposited, stored, disposed of, or placed or otherwise
 16 come to be located.

17 (B) "Facility" does not include:

18 (i) Any consumer product in consumer use; or

19 (ii) Any vessel;

20 (11) "Federal act" means the Comprehensive Environmental
 21 Response, Compensation, and Liability Act of 1980 as it existed January 1,
 22 2005;

23 (12) "Federally permitted release" means:

24 (A) Discharges in compliance with a permit issued under
 25 section 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342;

26 (B) Discharges resulting from circumstances identified and
 27 reviewed and made part of the public record with respect to a permit issued
 28 or modified under section 402 of the Federal Water Pollution Control Act, 33
 29 U.S.C. § 1342 et seq., and subject to a condition of the permit;

30 (C) Continuous or anticipated intermittent discharges from
 31 a point source, identified in a permit under section 402 of the Federal Water
 32 Pollution Control Act, 33 U.S.C. § 1342, that are caused by events occurring
 33 within the scope of relevant operating or treatment systems;

34 (D) Discharges in compliance with an enforceable permit
 35 under section 404 of the Federal Water Pollution Control Act, 33 U.S.C. §
 36 1344 et seq.;

1 (E) Releases in compliance with an enforceable final
 2 permit issued under sections 3005(a) through (d) of the federal Solid Waste
 3 Disposal Act , 42 U.S.C § 6925(a)-(d), from a hazardous waste treatment,
 4 storage, or disposal facility if the permit specifically identifies the
 5 hazardous substances and makes the substances subject to a standard of
 6 practice, control procedure or bioassay limitation or condition, or other
 7 control on the hazardous substances in the releases;

8 (F) Any release in compliance with an enforceable permit
 9 issued under 33 U.S.C. § 1412 or 33 U.S.C § 1413;

10 (G) Any injection of fluids authorized under federal
 11 underground injection control programs or state programs approved under Part
 12 C of the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.;

13 (H) Any emission into the air subject to a permit or
 14 control regulation under 42 U.S.C. § 7411, 42 U.S.C § 7412, 42 U.S.C. § 7470
 15 et seq., 42 U.S.C. § 7501 et seq., or state implementation plans submitted in
 16 accordance with 42 U.S.C. § 7410 and not disapproved by the Administrator of
 17 the United States Environmental Protection Agency, including any schedule or
 18 waiver granted, promulgated, or approved under these sections;

19 (I) Any injection of fluids or other materials authorized
 20 under applicable state law:

21 (i) For the purpose of stimulating or treating wells
 22 for the production of crude oil, natural gas, or water;

23 (ii) For the purpose of secondary, tertiary, or
 24 other enhanced recovery of crude oil or natural gas; or

25 (iii) That are brought to the surface in
 26 conjunction with the production of crude oil or natural gas and that are
 27 re injected;

28 (J) The introduction of any pollutant into a publicly
 29 owned treatment works if the pollutant is specified in and in compliance with
 30 applicable pretreatment standards of section 307(b) or (c) of the Federal
 31 Water Pollution Control Act, 33 U.S.C. § 1317(b) or (c)., and enforceable
 32 requirements in a pretreatment program submitted by the state or a
 33 municipality for federal approval under section 402 of that act; and

34 (K) Any release of source, special nuclear, or byproduct
 35 material, as those terms are defined in the federal Atomic Energy Act of 1954
 36 , 42 U.S.C. § 2011 et seq., in compliance with an enforceable license,

1 permit, regulation, or order issued under that act;

2 (13)(A) "Fiduciary" means a person acting for the benefit of
 3 another party as a bona fide:

4 (i) Trustee;

5 (ii) Executor;

6 (iii) Administrator;

7 (iv) Custodian;

8 (v) Guardian of estates or guardian ad litem;

9 (vi) Receiver;

10 (vii) Conservator;

11 (viii) Committee of estates of incapacitated person;

12 (ix) Personal representative;

13 (x) Trustee, including a successor to the trustee,
 14 under an indenture agreement, trust agreement, lease, or similar financing
 15 agreement for debt securities, certificates of interest or certificates of
 16 participation in debt securities, or other forms of indebtedness as to which
 17 the trustee is not, in the capacity of trustee, the lender; or

18 (xi) Representative in any other capacity that the
 19 director, after providing public notice, determines to be similar to the
 20 capacities described in subdivision (9)(A)(i)-(x) of this section.

21 (B) "Fiduciary" does not include:

22 (i) A person that is acting as a fiduciary with
 23 respect to a trust or other fiduciary estate which was organized for the
 24 primary purpose of or is engaged in actively carrying on a trade or business
 25 for profit, unless the trust or other fiduciary estate was created as part of
 26 or to facilitate one (1) or more estate plans or because of the incapacity of
 27 a natural person; or

28 (ii) A person that acquires ownership or control of
 29 a facility with the objective purpose of avoiding liability of the person or
 30 any other person;

31 (14) "Fiduciary capacity" means the capacity of a person in
 32 holding title to a facility or otherwise having control of or an interest in
 33 the facility pursuant to the exercise of the responsibilities of the person
 34 as a fiduciary;

35 (15) "Fund" means the Arkansas Emergency Response and Liability
 36 Trust Fund;

1 (16) "Hazardous substance" means:

2 (A) Any substance designated under § 311(b)(2)(A) of the
 3 Federal Water Pollution Control Act, as it existed on January 1, 2005;

4 (B) Any element, compound mixture, solution, or substance
 5 designated pursuant to § 101 of the federal Comprehensive Environmental
 6 Response, Compensation, and Liability Act of 1980, as it existed on January
 7 1, 2005;

8 (C) Any hazardous waste defined by the Arkansas Hazardous
 9 Waste Management Act of 1979, § 8-7-201 et seq., and the regulations
 10 promulgated under that act;

11 (D) Any toxic pollutant listed under § 307(a) of the
 12 Federal Water Pollution Control Act, as it existed on January 1, 2005;

13 (E) Any hazardous air pollutant listed under § 112 of the
 14 federal Clean Air Act, as it existed on January 1, 2005;

15 (F) Any hazardous chemical substance or mixture regulated
 16 under § 7 of the federal Toxic Substances Control Act, as it existed on
 17 January 1, 2005; and

18 (G) Any substance designated by regulations of the
 19 commission promulgated under this subchapter;

20 (17)(A) "Owner or operator" means:

21 (i) In the case of any facility, any person owning
 22 or operating a facility;

23 (ii)(a) In the case of a facility where title or
 24 control was conveyed due to bankruptcy, foreclosure, tax delinquency,
 25 abandonment, or similar means to a unit of state or local government, any
 26 person that owned, operated, or otherwise controlled activities at the
 27 facility immediately before the conveyance.

28 (b) The term does not include a person, who,
 29 without participating in the management of the facility, holds indicia of
 30 ownership primarily to protect his security interest in the facility; and

31 (iii) In case of a hazardous substance or a
 32 pollutant or contaminant accepted for transportation by a common or contract
 33 carrier and except as provided in § 8-7-1313(a)(3) or (4) of this subchapter:

34 (a) "Owner or operator" shall mean such common
 35 carrier or other bona fide for hire carrier acting as an independent
 36 contractor during such transportation;

1 (b) The shipper of the hazardous substance or
 2 the pollutant or contaminant shall not be considered to have caused or
 3 contributed to any release during such transportation which resulted solely
 4 from circumstances or conditions beyond its control.

5 (iv) In the case of a hazardous substance or a
 6 pollutant or contaminant that has been delivered by a common or contract
 7 carrier to a disposal or treatment facility and except as provided in § 8-7-
 8 1313(a)(3) or (4) of this subchapter:

9 (a) "Owner or operator" shall not include such
 10 common or contract carrier, and

11 (b) such common or contract carrier shall not
 12 be considered to have caused or contributed to any release at such disposal
 13 or treatment facility resulting from circumstances or conditions beyond its
 14 control.

15 (B) "Owner or operator" does not include:

16 (i) A person that, without participating in the
 17 management of the facility, holds indicia of ownership primarily to protect
 18 the person's security interest in the facility;

19 (ii) In the case of a hazardous substance or a
 20 pollutant or contaminant that has been delivered by a common or contract
 21 carrier to a disposal or treatment facility, except as provided in § 8-7-
 22 1313(a)(3) or (4) and § 8-7-1313(i)the common carrier;

23 (iii)(a) A unit of state or local government that
 24 acquired ownership or control involuntarily through bankruptcy, tax
 25 delinquency, abandonment, or other circumstances in which the government
 26 involuntarily acquires title by virtue of its function as sovereign.

27 (b) The exclusion provided under subdivision
 28 (17)(B)(iii)(a) of this section shall not apply to any unit of state or local
 29 government that has caused or contributed to the release or threatened
 30 release from the facility, and the state or local government shall be subject
 31 to the provisions of this subchapter in the same manner and to the same
 32 extent both procedurally and substantively as any nongovernmental entity,
 33 including liability under § 8-7-1313;

34 (iv) A person that is a lender that, without
 35 participating in the management of a facility, holds indicia of ownership
 36 primarily to protect the security interest of the person in the facility; or

1 (v) A person that is a lender which did not
 2 participate in the management of a facility before foreclosure,
 3 notwithstanding that the person:

4 (a) Forecloses on the facility; and

5 (b) After foreclosure, sells, re-leases in the
 6 case of a lease finance transaction, or liquidates the facility, maintains
 7 business activities, winds up operations, undertakes a response action under
 8 this subchapter or under the direction of the department with respect to the
 9 vessel or facility, or takes any other measure to preserve, protect, or
 10 prepare the facility before sale or disposition if the person seeks to sell,
 11 re-lease, or otherwise divest itself of the facility at the earliest
 12 practicable, commercially reasonable time on commercially reasonable terms,
 13 taking into account market conditions and legal and regulatory conditions;

14 (18)(A) "Participate in management" means:

15 (i) Actually participating in the management or
 16 operational affairs of a facility; and

17 (ii) A person that is a lender and which holds
 18 indicia of ownership primarily to protect a security interest in a facility,
 19 only if, while the borrower is still in possession of the facility encumbered
 20 by the security interest, the person:

21 (a) Exercises decision-making control over the
 22 environmental compliance related to the facility such that the person has
 23 undertaken responsibility for the hazardous substance or the pollutant or
 24 contaminant handling or disposal practices related to the facility; or

25 (b) Exercises control at a level comparable to
 26 that of a manager of the facility, such that the person has assumed or
 27 manifested responsibility for the overall management of the facility
 28 encompassing day-to-day decision making with response to environmental
 29 compliance or overall or substantially all of the operational functions, as
 30 distinguished from financial or administrative functions, of the facility
 31 other than the function of environmental compliance.

32 (B) "Participate in management" does not include:

33 (i) Merely having the capacity to influence or the
 34 unexercised right to control facility operations;

35 (ii) Performing an act or failing to act before the
 36 time at which a security interest is created in the facility;

1 (iii) Holding a security interest or abandoning or
2 releasing a security interest;

3 (iv) Including in the terms of an extension of
4 credit or in a contract or security agreement relating to the extension a
5 covenant, warranty, or other term or condition that relates to environmental
6 compliance;

7 (v) Monitoring or enforcing the terms and conditions
8 of the extension of credit or security interest;

9 (vi) Monitoring or undertaking one (1) or more
10 inspections of the facility;

11 (vii) Requiring a response action or other lawful
12 means of addressing a release or threatened release in connection with the
13 facility before, during, or on the expiration of the term of the extension of
14 credit;

15 (viii) Providing financial or other advice or
16 counseling in an effort to mitigate, prevent, or cure default or diminution
17 in the value of the facility;

18 (ix) Restructuring, renegotiating, or otherwise
19 agreeing to alter the terms and conditions of the extension of credit or
20 security interest, or exercising forbearance;

21 (x) Exercising other remedies that may be available
22 under applicable law for the breach of a term or condition of the extension
23 of credit or security agreement; or

24 (xi) Conducting a response action under this
25 subchapter or under the direction of the department;

26 (19) "Person" means any individual, corporation, company, firm,
27 partnership, association, trust, joint-stock company or trust, venture, state
28 or federal government or agency, or any other legal entity however organized;

29 (20) "Pollutant or contaminant" means any element, substance,
30 compound, mixture, or agent other than a hazardous substance that:

31 (A) After release from a facility and exposure, ingestion,
32 inhalation, or assimilation into any organism either directly from the
33 environment or indirectly by ingestion through the food chain will or may
34 reasonably be anticipated to cause death, disease, behavioral abnormalities,
35 cancer, genetic mutation, physiological malfunctions, including malfunctions
36 in reproduction, or physical deformations in the organisms or their

1 offspring; or

2 (B) Has been designated by regulations of the commission
 3 promulgated under this subchapter;

4 (21) "Prospective purchaser" means a person who:

5 (A) Expresses a willingness to acquire an abandoned site as
 6 defined in § 8-7-1102(a)(1);

7 (B) Is not a liable party under § 8-7-1313(a);

8 (C) Completes a site assessment as defined in § 8-7-
 9 1102(a)(6);

10 (D) Enters into an implementing agreement with the
 11 department under § 8-7-1104; and

12 (E) Obtains a certificate of completion from the
 13 department;

14 (22)(A) "Release" means any spilling, leaking, pouring,
 15 emitting, emptying, discharging, injecting, escaping, leaching, dumping, or
 16 disposing of a hazardous substance or a pollutant or contaminant, including
 17 the abandonment or discarding of barrels, containers, and other closed
 18 receptacles containing a hazardous substance or a pollutant or contaminant
 19 into the environment.

20 (B) "Release" does not include:

21 (i) Any release that results in exposure to persons
 22 solely within a workplace, with respect to a claim that the persons may
 23 assert against the employer of the persons;

24 (ii) Emissions from the engine exhaust of a motor
 25 vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

26 (iii) Release of source, byproduct, or special
 27 nuclear material from a nuclear incident, as those terms are defined in the
 28 federal Atomic Energy Act of 1954, as it existed on January 1, 2005; and

29 (23) "Remedy" or remedial action" means actions consistent with
 30 a permanent remedy instead of or in addition to removal actions in the event
 31 of a release or threatened release, including, but not limited to:

32 (A) Investigations designed to determine the need for and
 33 scope of remedial action; and

34 (B) Such planning, legal, fiscal, economic, engineering,
 35 geological, technical, or architectural studies as are necessary to plan and
 36 direct remedial actions, to recover the cost of remedial actions, and to

1 enforce the provisions of this subchapter;

2 (24) "Remove" or "removal action" means:

3 (A) The cleanup or removal of a released hazardous
 4 substance or a pollutant or contaminant from the environment;

5 (B) Necessary actions taken in the event of a threatened release of a
 6 hazardous substance or a pollutant or contaminant into the environment;

7 (C) Actions necessary to monitor, test, analyze, and evaluate a release or
 8 threatened release of a hazardous substance or a pollutant or contaminant;

9 (D) Disposal or processing of removed material; or

10 (E) Other actions necessary to prevent, minimize, or mitigate damage to
 11 the public health or welfare or the environment that may otherwise result from a release or
 12 threatened release;

13 (25) "Response action" means remove, removal, remedy, or
 14 remedial action;

15 (26) "Threatened release" means any situation in which a sudden
 16 release of a hazardous substance or a pollutant or contaminant can be
 17 reasonably expected unless prevented by a change of operation or the
 18 installation or construction of containment or treatment devices or by
 19 removal or other remedial action;

20 (27) "Transport" means the movement of hazardous substances or
 21 pollutants or contaminants from the point of generation to any intermediate
 22 points and finally to the point of ultimate storage or disposal; and

23 (28) "Treatment" means any method, technique, or process,
 24 including neutralization, designed to change the physical, chemical, or
 25 biological character or composition of any hazardous substance or any
 26 pollutant or contaminant so as to neutralize the material or render it less
 27 hazardous or less of a threat to public health or the environment, safer for
 28 transport, amenable to recovery, amenable to storage, amenable to disposal,
 29 or reduced in volume.

30
 31 8-7-1304. Penalties.

32 (a) Any person that violates any provision of this subchapter or commits any unlawful
 33 act under this subchapter shall be subject to:

34 (1) A civil penalty in an amount the Director of the Arkansas
 35 Department of Environmental Quality shall find appropriate, not to exceed
 36 twenty-five thousand dollars (\$25,000) for each day of the violation;

1 (2) The payment of any expenses reasonably incurred by the state
 2 in response to a release or threatened release; and

3 (3) The payment to the state of reasonable compensation of any
 4 actual damage resulting from a release or threatened release.

5 (b)(1) Any person that violates any provision of this subchapter, any
 6 regulations or rules promulgated under this subchapter, or any plans issued
 7 under this subchapter of regulations or rules promulgated under this
 8 subchapter may be assessed an administrative civil penalty not to exceed
 9 twenty-five thousand dollars (\$25,000) per violation.

10 (2) Each day of a continuing violation may be deemed a separate
 11 violation for purposes of penalty assessment.

12 (3) No civil penalty may be assessed until the person charged
 13 with the violation has been given the opportunity for a hearing in accordance
 14 with regulations adopted by the Arkansas Pollution Control and Ecology
 15 Commission.

16 (4) Administrative procedures adopted by the commission also may
 17 be used to recover all costs, expenses, and damages to the department and any
 18 other agency or subdivision of the state in enforcing or effectuating the
 19 provisions of this subchapter, including, but not limited to, natural
 20 resource damages.

21
 22 8-7-1305. Unlawful acts.

23 It shall be unlawful for any person to:

24 (1) Violate any provision of this subchapter or any rule or
 25 regulation adopted under this subchapter;

26 (2) Knowingly make a false statement, representation, or
 27 certification in any report or other document filed or required by this
 28 subchapter or the rules and regulations adopted under this subchapter;

29 (3) Violate any order issued by the Arkansas Department of
 30 Environmental Quality under this subchapter or any provision of those orders;
 31 or

32 (4) Fail to implement removal or remedial actions in accordance
 33 with representations made by persons liable for a release or threatened
 34 release to the Arkansas Department of Environmental Quality as to their
 35 willingness and ability to appropriately respond to the release or threatened
 36 release.

1
 2 8-7-1306. Powers and duties of the Arkansas Department of
 3 Environmental Quality and Arkansas Pollution Control and Ecology Commission
 4 generally.

5 (a) In administering this subchapter, the Arkansas Department of
 6 Environmental Quality shall have the authority to:

7 (1) Conduct such investigations and inspections as it may deem
 8 necessary or advisable for the discharge of its duties under this subchapter
 9 and to ensure compliance with this subchapter and any orders, rules,
 10 regulations, and permits issued under this subchapter;

11 (2) Make, issue, modify, revoke, and enforce orders, after
 12 notice and opportunity for hearing, prohibiting violation of any of the
 13 provisions of this subchapter or of any rules, regulations, or permits issued
 14 under this subchapter;

15 (3) Affirmatively order that response actions be taken as may be
 16 necessary or appropriate to implement or effectuate the provisions and
 17 purposes of this subchapter;

18 (4) Institute proceedings in a court of competent jurisdiction
 19 to:

20 (A) Compel compliance with and to restrain any violation
 21 of the provisions of this subchapter or any rules, regulations, orders, or
 22 permits issued under this subchapter, including the recovery of any civil
 23 penalties; and

24 (B) Recover all costs, expenses, and damages to the
 25 department and any other agency or subdivision of the state in enforcing or
 26 effectuating the provisions of this subchapter, including, but not limited
 27 to, natural resource damages; and

28 (5) Establish policies and standards for effective response
 29 actions.

30 (b) In any civil action in which a temporary restraining order,
 31 preliminary injunction, or permanent injunction is sought, it shall not be
 32 necessary to allege or prove at any stage of the proceeding that irreparable
 33 damage will occur should the requested relief be granted, nor that the remedy
 34 at law is inadequate.

35 (c)(1) In addition to the powers enumerated in subsection (a) of this
 36 section, the department shall have and may use in the administration and

1 enforcement of this subchapter all of the powers that it has under other laws
 2 administered by the department, including, but not limited to:

3 (A) The Arkansas Water and Air Pollution Control Act, § 8-
 4 4-101 et seq.;

5 (B) The Arkansas Hazardous Waste Management Act, § 8-7-201
 6 et seq.; and

7 (C) The Arkansas Solid Waste Management Act, § 8-6-201 et
 8 seq.

9 (2) Likewise, the department shall have and may use all powers
 10 of this subchapter in the administration and enforcement of any other law
 11 administered by it, including the Arkansas Hazardous Waste Management Act, §
 12 8-7-201 et seq.

13 (d)(1) All orders issued by the department under the authority of the
 14 Emergency Response Fund Act § 8-7-401 et seq., or the Remedial Action Trust
 15 Fund Act, § 8-7-501 et seq., that are repealed and replaced by this
 16 subchapter, shall continue in effect and shall be fully enforceable and
 17 administered in accordance with the provisions of this subchapter.

18 (2) However, the apportionment of costs and expenditures shall
 19 be as follows:

20 (A) Any party found liable for any costs or expenditures
 21 that establishes by a preponderance of the evidence that only a portion of
 22 the costs or expenditures is attributable to his or her actions shall be
 23 required to pay only that portion;

24 (B) If the trier of fact finds the evidence insufficient
 25 to establish each party's portion of costs or expenditures, the court, to the
 26 extent practicable, shall apportion the costs or expenditures among the
 27 liable parties according to equitable principles;

28 (C) No liable party shall be liable for more than that
 29 party's apportioned share of the amount expended for the action; and

30 (D) The apportioned share shall be based on a liable
 31 party's portion of the total volume of hazardous substances or pollutants or
 32 contaminants at the site in question at the time of action taken.

33 (e) All permits issued by the department under the authority of the
 34 Emergency Response Fund Act or the Remedial Action Trust Fund Act, which are
 35 repealed and replaced by this subchapter, shall continue in effect and shall
 36 be fully enforceable and administered in accordance with the provisions of

1 this subchapter.

2 (f) Under this subchapter, the Arkansas Pollution Control and Ecology
 3 Commission may:

4 (1) Adopt, after notice and public hearing, rules and
 5 regulations regarding response actions as may be necessary or appropriate to
 6 implement or effectuate the purposes and intent of this subchapter;

7 (2) Promulgate rules, regulations, and procedures not otherwise
 8 governed by applicable law that the commission deems necessary to secure
 9 public participation in the environmental decision-making process;

10 (3) Provide for the right to appeal an order or decision of the
 11 Director of the Arkansas Department of Environmental Quality or the
 12 director's designee;

13 (4) In the case of an administrative enforcement or emergency
 14 action, provide for the right to contest any administrative enforcement or
 15 emergency action initiated by the director; and

16 (5) Upon a majority vote, initiate review of any of the
 17 director's decisions.

18
 19 8-7-1307. Removal authority of the Director of the Arkansas Department of
 20 Environmental Quality.

21 (a)(1) Upon finding that a release or a threatened release of a hazardous substance or a
 22 pollutant or contaminant may present an imminent and substantial danger to the public
 23 health, safety, or welfare or to the environment, the Director of the Arkansas Department of
 24 Environmental Quality may issue without notice or hearing an order reciting the existence of the
 25 imminent hazard and substantial endangerment and requiring that such action be taken as he or
 26 she deems necessary to protect the public health, safety, or welfare of any affected or
 27 threatened persons or the environment and to otherwise meet the emergency.

28 (2) The order of the director may include, but is not limited to, requiring any
 29 person liable in whole or in part for the release or threatened release or any person in total or
 30 partial control of the site, facility, or transport vehicle from which the release or threatened
 31 release emanates to take such steps as are necessary to protect the public health and safety and
 32 the environment.

33 (3)(A) The orders may be issued verbally or in writing.

34 (B) If the orders are originally issued verbally, a written order shall be
 35 issued by the director as soon as reasonably possible confirming the verbal order.

36 (4)(A) Any person to which the order is directed shall comply with the order

1 immediately.

2 (B) However, if the person makes written application to the commission
 3 within ten (10) days after the issuance of the order, the person shall be afforded a hearing within
 4 ten (10) days after filing of the application.

5 (b) The director may initiate and implement removal actions under this subchapter
 6 whenever there is a release or a threatened release of a hazardous substance or a pollutant
 7 or contaminant that may present an imminent and substantial endangerment to the public
 8 health, safety, or welfare or to the environment.

9 (c) If the director has reason to believe that a release or threatened release of a
 10 hazardous substance or a pollutant or contaminant may present an imminent and
 11 substantial endangerment to the public health, safety, or welfare or to the environment, the
 12 director and the employees and the authorized representatives of the Arkansas Department of
 13 Environmental Quality shall have the right to enter upon any affected private or public property
 14 for the purpose of collecting information or for initiating and implementing appropriate removal
 15 actions.

16 (d) Removal actions are not authorized if the director has reasonable assurance that:

17 (1) The person liable for a release or threatened release has committed to and is
 18 capable of initiating a removal action in a timely manner; and

19 (2) The actions will achieve results equivalent to the results from a removal
 20 action authorized in this section.

21 (e) In taking removal action under this subchapter, the department or any contractor of
 22 the department under this section shall not be required to obtain any state or local permit for
 23 any removal action conducted under this subchapter at an environmental response site if the
 24 removal action is otherwise carried out in compliance with the regulations of the commission.

25

26 8-7-1308. Remedial authority of the Director of the Arkansas
 27 Department of Environmental Quality.

28 (a) Upon finding that an environmental response site exists or may
 29 exist, the Director of the Arkansas Department of Environmental Quality may
 30 issue an order to any person liable for the release or threatened release
 31 under § 8-7-1313.

32 (b) The director or any employee or authorized agent of the Arkansas
 33 Department of Environmental Quality may enter upon any private or public
 34 property for the purpose of collecting information under this subchapter or
 35 for initiating and implementing remedial actions.

36 (c) The director may initiate and implement remedial actions under

1 this subchapter under the provisions of § 8-7-1310.

2 (d) In taking remedial action under this subchapter, the department or any
 3 contractor of the department under this section shall not be required to
 4 obtain any state or local permit for any remedial action conducted under this
 5 subchapter at an environmental response site if the remedial action is
 6 otherwise carried out in compliance with the regulations of the commission.

7 (e) The fact that an environmental response site is or is not listed
 8 by the Arkansas Pollution Control and Ecology Commission under § 8-7-1310
 9 shall in no manner limit the authority of the department under this
 10 subchapter.

11
 12 8-7-1309. Limitations on response.

13 (a) The Director of the Arkansas Department of Environmental Quality
 14 may not provide for a removal or remedial action under §§ 8-7-1307 or 8-7-
 15 1308 in response to a release or threat of release:

16 (1) Of a naturally occurring substance in its unaltered form, or
 17 altered solely through naturally occurring processes or phenomena, from a
 18 location where it is naturally found;

19 (2) From products that are part of the structure of and result
 20 in exposure within residential buildings or business or community structures;
 21 or

22 (2) Into public or private drinking water supplies due to
 23 deterioration of the system through ordinary use.

24 (b) Notwithstanding subsection (a) of this section, to the extent
 25 authorized by §§ 8-7-1307 or 8-7-1308, the director may respond to any
 26 release or threat of release if in the director's discretion, the release or
 27 threat of release constitutes a public health or environmental emergency and
 28 no other person with the authority and capability to respond to the emergency
 29 will do so in a timely manner.

30
 31 8-7-1310. Arkansas Environmental Response and Liability Trust Fund.

32 (a)(1) There is established on the books of the Treasurer of State,
 33 the Auditor of State, and the Chief Fiscal Officer of the State a fund to be
 34 known as the "Arkansas Environmental Response and Liability Trust Fund".

35 (2) Any moneys remaining in the Hazardous Substance Remedial
 36 Action Trust Fund and the Emergency Response Fund as of June 30, 2005, shall

1 be transferred in their entirety to the Arkansas Environmental Response and
 2 Liability Trust Fund on July 1, 2005.

3 (b) Beginning July 1, 2005, the Arkansas Environmental Response and
 4 Liability Trust Fund shall consist of all moneys received as penalties under
 5 §§ 8-4-101 -- 8-4-106, 8-4-201 -- 8-4-229, 8-4-301 -- 8-4-313, 8-4-401 -- 8-
 6 4-409, 8-6-201 -- 8-6-214, 8-7-201 -- 8-7-226, 8-7-504, and 20-27-1001 -- 20-
 7 27-1007, there to be administered by the Director of the Arkansas Department
 8 of Environmental Quality, who shall administer expenditures from the fund.

9 (c) Additionally, this fund shall consist of any moneys received by
 10 the state as gifts, donations, interest earnings, fees assessed on the
 11 generation of hazardous wastes, punitive damages, or costs expended from the
 12 Emergency Response Fund or the Remedial Action Trust Fund and recovered under
 13 § 8-7-1315, all punitive damages collected pursuant to § 8-7-1317, all moneys
 14 or interest earned upon moneys deposited into the Environmental Education
 15 Fund as set out in subsection (d) of this section, and any other moneys
 16 legally designated for the Arkansas Environmental Response and Liability
 17 Trust Fund.

18 (d)(1) Ten percent (10%) of the moneys collected for the Arkansas
 19 Environmental Response and Liability Trust Fund shall be deposited in the
 20 Environmental Education Fund.

21 (2) Total deposit of funds into the Environmental Education Fund
 22 shall not exceed two hundred seventy-five thousand dollars (\$275,000) per
 23 fiscal year.

24 (3) The remaining moneys in the Arkansas Environmental Response
 25 and Liability Trust Fund may be expended by the director solely for the
 26 following purposes:

27 (A) The costs and expenses reasonably necessary for the
 28 administration of this subchapter by the Arkansas Department of Environmental
 29 Quality;

30 (B) The state share mandated by § 104(c)(3) of the federal
 31 Public Health and Welfare Act, 42 U.S.C. § 9604(c)(3) as it existed on
 32 January 1, 2005;

33 (C) An amount not to exceed five hundred thousand dollars
 34 (\$500,000) in any one (1) fiscal year, may be deposited into the Brownfield
 35 Revolving Loan Fund established under the Arkansas Brownfield Revolving Loan
 36 Fund Act, § 15-5-1501 et seq., and the moneys shall not be deposited or

1 deemed to be a part of the State Treasury for the purposes of Arkansas
 2 Constitution, Article 5, § 29, Arkansas Constitution, Article 16, § 12,
 3 Arkansas Constitution, Amendment 20, or any other constitutional or statutory
 4 provisions;

5 (D)(i) To provide for the investigation, identification,
 6 containment, abatement, treatment, or control, including monitoring and
 7 maintenance, of environmental response sites.

8 (ii) The director may enter into contracts and use
 9 the funds for those purposes directly associated with identification,
 10 investigation, containment, abatement, treatment, or control, including, but
 11 not limited to:

12 (a) Hiring of personnel;

13 (b) Purchase, lease, or rental of equipment;

14 and

15 (c) Other necessary expenses related to the
 16 operation and implementation of this subchapter; and

17 (E) The expenditures for removal actions, including:

18 (i) The purchase of any commodities or services
 19 necessary in taking removal actions in connection with a release or
 20 threatened release; and

21 (ii) Reimbursement of all costs incurred by the
 22 Arkansas Department of Environmental Quality in taking removal actions in
 23 connection with a release or threatened release.

24 (e)(1)(A) Except as otherwise provided in this subchapter, no expenditures for remedial
 25 actions from the Arkansas Environmental Response and Liability Trust Fund as authorized by
 26 subdivisions (d)(3)(B) and (d)(3)(D) of this section shall be made before the approval by the
 27 Arkansas Pollution Control and Ecology Commission of a prioritized listing of environmental
 28 response sites at which response actions are authorized through the use of Arkansas
 29 Environmental Response and Liability Trust Fund moneys.

30 (B) This listing shall be revised as needed by the department and
 31 submitted to the commission for approval after public notice and opportunity for hearing.

32 (2)(A) Upon a showing that a release or threatened release of a
 33 hazardous substance or a pollutant or contaminant at a site exists and will
 34 continue without expeditious remedial action, the commission may list the
 35 site on the prioritized listing pursuant to the procedures set out in § 8-4-
 36 202(e) before public notice and thereby authorize the director to expend

1 funds under subdivision (d)(3)(D) of this section.

2 (B) Such an emergency listing need not be supported by a
 3 factual showing of irreparable harm or imminent and substantial endangerment.

4
 5 8-7-1311. Federal actions or compensation not to be duplicated.

6 (a) No actions taken under this subchapter by the Arkansas Department
 7 of Environmental Quality may duplicate federal actions.

8 (b) No claims for the costs of response or other claims compensated
 9 under the federal act shall be compensable under this subchapter.

10
 11 8-7-1312. Furnishing of information.

12 (a) For purposes of assisting in determining the need for response
 13 action in connection with a release or threat of release of a hazardous
 14 substance or a pollutant or contaminant under this subchapter or for
 15 enforcing the provisions of this subchapter, any person who stores, treats,
 16 or disposes of a hazardous substance or a pollutant or contaminant or, if
 17 necessary to ascertain facts not available at the site or facility where the
 18 hazardous substance or the pollutant or contaminant is stored, treated, or
 19 disposed of, any person who generates, transports, otherwise handles, or has
 20 handled hazardous substances or pollutants or contaminants shall, upon
 21 request of any officer or employee of the Arkansas Department of
 22 Environmental Quality, furnish information relating to the release or
 23 threatened release and permit the officer or employee of the department at
 24 all reasonable times to have access to and copy all records relating to the
 25 substances and to inspect and obtain samples of any such substances or other
 26 materials.

27 (b) However, except for emission data, any information that would constitute a trade
 28 secret under the Arkansas Trade Secrets Act, § 4-75-601 et seq., that is obtained by the
 29 department or its employees in the administration of this subchapter shall be kept confidential.

30
 31 8-7-1313. Liability.

32 (a) Notwithstanding any other provision or rule of law, and subject
 33 only to the defenses set forth in this section, any of the following shall be
 34 liable for all costs of remedial and removal actions, including any response
 35 costs incurred by the Arkansas Department of Environmental Quality:

36 (1) The owner and operator of an environmental response site;

1 (2) Any person that at the time of disposal of any hazardous
 2 substance or a pollutant or contaminant owned or operated an environmental
 3 response site at which the hazardous substances or the pollutants or
 4 contaminants were disposed of;

5 (3) Any person that by contract, agreement, or otherwise
 6 arranged for disposal or treatment or arranged with a transporter for
 7 transport for disposal or treatment of hazardous substances or pollutants or
 8 contaminants owned or possessed by the person, by any other party or entity,
 9 at any environmental response site owned or operated by another party or
 10 entity and containing such hazardous substances or pollutants or
 11 contaminants; and

12 (4) Any person that accepts or accepted any hazardous substances
 13 or other pollutants or contaminants for transport to disposal, storage, or
 14 treatment facilities, incineration vessels, or sites selected by the person
 15 from which there is a release or threatened release which causes the
 16 incurrence of response costs.

17 (b) The parties listed in subsection (a) of this section shall be
 18 liable for:

19 (1) All costs of removal or remedial action incurred by the
 20 state;

21 (2) Any other necessary costs of response incurred by any other
 22 person;

23 (3) Damages for injury to, destruction of, or loss of natural
 24 resources, including the reasonable costs of assessing the injury,
 25 destruction, or loss resulting from such a release; and

26 (4) The costs of any health assessment or health effects study
 27 carried out under this subchapter.

28 (c) There shall be no liability under subsection (a) of this section
 29 for a person otherwise liable that can establish by a preponderance of the
 30 evidence that the release or threatened release of a hazardous substance or a
 31 pollutant or contaminant and the damages resulting therefrom were caused
 32 solely by:

33 (1) An act of nature;

34 (2) An act of war;

35 (3) An act or omission of a third party other than an employee,
 36 employer, or agent of the defendant, or other than one whose act or omission

1 occurs in connection with a contractual relationship existing directly or
 2 indirectly with the defendant, if the defendant establishes by a
 3 preponderance of the evidence:

4 (A) That he or she:

5 (i) Exercised due care with respect to the hazardous
 6 substance or the pollutant or contaminant concerned, taking into
 7 consideration the characteristics of the hazardous substance or pollutant or
 8 contaminant, in light of all relevant facts and circumstances; and

9 (ii) Took precautions against foreseeable acts or
 10 omissions of the third party and the consequences that could foreseeably
 11 result from the acts or omissions; or

12 (4) Any combination of factors under this subsection (c).

13 (d) Nothing in subdivision (c)(3) of this section diminishes the
 14 liability of any previous owner or operator of a facility who would otherwise
 15 be liable under this chapter.

16 (e) Notwithstanding subdivision (c)(3) of this section, if the
 17 defendant obtained actual knowledge of the release or threatened release of a
 18 hazardous substance or a pollutant or contaminant at a facility when the
 19 defendant owned the real property and then subsequently transferred ownership
 20 of the property to another person without disclosing the knowledge, the
 21 defendant shall be treated as liable under § 8-7-1313(a)(1) and no defense
 22 under § 8-7-1313(c)(3) shall be available to the defendant.

23 (f) Nothing in subdivision (c)(3) of this section affects the
 24 liability under this subchapter of a defendant who, by any act or omission,
 25 caused or contributed to the release or threatened release of a hazardous
 26 substance or a pollutant or contaminant that is the subject of the action
 27 relating to the facility.

28 (g) A person is not liable for a release or threatened release of a hazardous substance or
 29 a pollutant or contaminant if the person merely provides financing or loans to another
 30 person or obtains title to property through foreclosure or through conveyance of property in total
 31 or partial satisfaction of a mortgage or other security interest in property.

32 (h)(1)(A) The liability of a fiduciary under any provision of this subchapter for the
 33 release or threatened release of a hazardous substance or a pollutant or contaminant at,
 34 from, or in connection with a facility held in a fiduciary capacity shall not exceed the assets held
 35 in the fiduciary capacity.

36 (B) This subsection (h) does not apply to the extent that a person is liable

1 under this subchapter independently of the person's ownership of a facility as a fiduciary or
2 actions taken in a fiduciary capacity.

3 (C) This subsection (h) does not limit the liability pertaining to a release
4 or threatened release of a hazardous substance or a pollutant or contaminant if negligence
5 of a fiduciary caused or contributed to the release or threatened release.

6 (D) A fiduciary shall not be liable in its personal capacity under this
7 subchapter for:

8 (i) Undertaking or directing another person to undertake a
9 response action under this subchapter or at the direction of a designated agent of the
10 department who is acting in furtherance of this subchapter, except to the extent that the actions
11 amount to negligence on the part of the fiduciary or other person;

12 (ii) Undertaking or directing another person to undertake any
13 other lawful means of addressing a hazardous substance or a pollutant or contaminant in
14 connection with the facility;

15 (iii) Terminating the fiduciary relationship;

16 (iv) Including in the terms of the fiduciary agreement a covenant,
17 warranty, or other term or condition that relates to compliance with an environmental law or
18 monitoring, modifying, or enforcing the term or condition;

19 (v) Monitoring or undertaking one (1) or more inspections of the
20 facility;

21 (vi) Providing financial or other advice or counseling to other
22 parties to the fiduciary relationship, including the settlor or beneficiary;

23 (vii) Restructuring, renegotiating, or otherwise altering the terms
24 and conditions of the fiduciary relationship;

25 (viii) Administering as a fiduciary a facility that was contaminated
26 before the fiduciary relationship began; or

27 (ix) Declining to take any of the actions described in subdivisions
28 (h)(1)(D)(i)-(ix) of this section.

29 (2) Nothing in this subsection (h) applies to a person if the
30 person:

31 (A) Acts in a capacity other than that of a fiduciary or
32 in a beneficiary capacity, and in that capacity, directly or indirectly
33 benefits from a trust or fiduciary relationship;

34 (B) Is a beneficiary and a fiduciary with respect to the
35 same fiduciary estate; or

36 (C) As a fiduciary, receives benefits that exceed

1 customary or reasonable compensation and incidental benefits permitted under
 2 other applicable law.

3 (3) This subsection (h) does not preclude a claim under this
 4 subchapter against the assets of the estate or trust administered by the
 5 fiduciary or a nonemployee agent or independent contractor retained by the
 6 fiduciary.

7 (i) A person that owns real property that is contiguous to or
 8 otherwise similarly situated with respect to and that is or may be
 9 contaminated by a release or threatened release of a hazardous substance or a
 10 pollutant or contaminant from real property which is not owned by that person
 11 shall not be considered to be an owner or operator of a facility under
 12 subdivisions (a)(1) or (2) of this section solely by reason of the
 13 contamination if the person:

14 (1) Did not cause, contribute, or consent to the release or
 15 threatened release;

16 (2) Is not potentially liable or affiliated with any other
 17 person that is potentially liable for response costs at an environmental
 18 response site through any direct or indirect familial relationship or any
 19 contractual, corporate, or financial relationship other than a contractual,
 20 corporate, or financial relationship that is created by a contract for the
 21 sale of goods or services or the result of a reorganization of a business
 22 entity that was potentially liable;

23 (3) Takes reasonable steps to prevent or limit human,
 24 environmental, or natural resource exposure to any hazardous substance or any
 25 pollutant or contaminant released on or from property owned by that person;

26 (4) Provides full cooperation, assistance, and access to persons
 27 that are authorized to conduct response actions or natural resource
 28 restoration at the facility from which there has been a release or threatened
 29 release, including the cooperation and access necessary for the installation,
 30 integrity, operation, and maintenance of any complete or partial response
 31 action or natural resource restoration at the facility;

32 (5) Is in compliance with any land use restrictions established
 33 or relied on in connection with the response action at the environmental
 34 response site and does not impede the effectiveness or integrity of any
 35 institutional control employed in connection with the response action;

36 (6) Is in compliance with any request for information or

1 administrative subpoena issued by the director under this subchapter;

2 (7) Provides all legally required notices with respect to the
 3 discovery or release of any hazardous substances or pollutants or
 4 contaminants at the facility; and

5 (8) At the time at which the person acquired the property, did
 6 not know or have reason to know that the property was or could be
 7 contaminated by a release or threatened release of one (1) or more hazardous
 8 substances or pollutants or contaminants from other real property not owned
 9 or operated by the person.

10 (j)(1) To qualify as a person described in subsection (i) of this
 11 section, a person shall establish by a preponderance of the evidence that the
 12 conditions in subdivisions (i)(1)-(8) of this section have been met.

13 (2) With respect to a person described in subsection (j) of this
 14 section, nothing in this section limits any defense to liability that may be
 15 available to the person under any other provision of law or imposes liability
 16 on the person that is not otherwise imposed by subsection (j) of this
 17 section.

18 (3) The director may decide that no enforcement action will be
 19 initiated under this subchapter against a person described in subsection (j)
 20 of this section and grant the person protection against cost recovery or
 21 contribution action under this subchapter.

22 (k)(1) No person ,including the United States or any State or Indian
 23 tribe, may recover under the authority of this section for any response costs
 24 or damages resulting from the application of a pesticide product registered
 25 under the Federal Insecticide, Fungicide, and Rodenticide Act.

26 (2) Nothing in this subsection (k) shall affect or modify in any
 27 way the obligations or liability of any person under any other provision of
 28 State or Federal law, including common law, for damages, injury, or loss
 29 resulting from a release of any hazardous substance or any pollutant or
 30 contaminant or for removal or remedial action or the costs of removal or
 31 remedial action of the hazardous substance or the pollutant or contaminant.

32 (l)(1) Recovery by any person, including the United States or any
 33 State or Indian tribe, for response costs or damages resulting from a
 34 federally permitted release shall be pursuant to existing law in lieu of this
 35 section.

36 (2) Nothing in this subsection (l) shall affect or modify in any

1 way the obligations or liability of any person under any other provision of
 2 State or Federal law, including common law, for damages, injury, or loss
 3 resulting from a release of any hazardous substance or any pollutant or
 4 contaminant or for removal or remedial action or the costs of removal or
 5 remedial action of the hazardous substance or the pollutant or contaminant.

6 (m)(1) Notwithstanding subsection (a)(1) of this section, any person
 7 whose potential liability for a release or threatened release is based solely
 8 on being considered to be an owner or operator of an environmental response
 9 site, shall not be liable as long as the person:

10 (A) Is a prospective purchaser as defined in § 8-7-
 11 1303(20); and

12 (B) Does not impede the performance of a response action
 13 or natural resource restoration.

14 (2) If there are unrecovered response costs incurred by the
 15 department at an environmental response site for which an owner of the
 16 facility is not liable by reason of subdivision (m)(1) of this section, and
 17 if each of the conditions described in subdivision (m)(3) of this section is
 18 met, the department shall have a lien on the environmental response site, or
 19 may by agreement with the owner, obtain from the owner a lien on any other
 20 property or other assurance of payment satisfactory to the director, for the
 21 unrecovered response costs.

22 (3) The conditions referred to in subdivision (m)(2) of this
 23 section are the following:

24 (A) A response action for which there are unrecovered
 25 costs of the department is carried out at the environmental response site;
 26 and

27 (B) The response action increases the fair market value of
 28 the facility above the fair market value of the facility that existed before
 29 the response action was initiated.

30 (4) A lien under subdivision (m)(2) of this section shall:

31 (A) Be in an amount not to exceed the increase in fair
 32 market value of the property attributable to the response action at the time
 33 of a sale or other disposition of the property;

34 (B) Arise at the time at which costs are first incurred by
 35 the department with respect to a response action at the facility;

36 (C) Be subject to the filing and notice requirements of §

1 8-7-1316; and

2 (D) Continue until the earlier of:

3 (i) Satisfaction of the lien by sale or other means;

4 or

5 (ii) Recovery of all response costs incurred at the
 6 environmental response site.

7
 8 8-7-1314. Right of apportionment - Factors.

9 (a) Any person held jointly and severally liable under the provisions
 10 of this subchapter has the right to have the trier of fact apportion
 11 liability among the parties as provided in this section.

12 (b) The burden is on each defendant to show how that defendant's
 13 liability should be apportioned.

14 (c) The court shall reduce the amount of damages in proportion to any
 15 amount of liability apportioned to the party recovering.

16 (d) In apportioning the liability of any party under this section, the
 17 trier of fact shall consider the following:

18 (1) The extent to which that party's contribution to the release
 19 can be distinguished;

20 (2) The amount of hazardous substances or pollutants,
 21 contaminants, or other constituents involved;

22 (3) The degree of toxicity of the hazardous substances or
 23 pollutants, contaminants, or other constituents involved;

24 (4) The degree of involvement of and care exercised by the party
 25 in manufacturing, treating, transporting, and disposing of the hazardous
 26 substance or pollutant, contaminant, or other constituent;

27 (5) The degree of cooperation by the party with federal, state,
 28 or local officials to prevent any harm to the public health or the
 29 environment; and

30 (6) Knowledge by the party of the hazardous nature of the
 31 substance.

32
 33 8-7-1315. Recovery of expenditures.

34 (a) After an expenditure from the Arkansas Environmental Response and
 35 Liability Trust Fund, the Emergency Response Fund, or the Remedial Action
 36 Trust Fund for a removal or remedial action, the Arkansas Department of

1 Environmental Quality shall institute an action in any court of competent
2 jurisdiction to recover the expenditure from any person or persons liable for
3 the release or threatened release, including taking any appropriate legal
4 action.

5 (b) All moneys recovered from responsible parties under this section
6 shall be deposited into the Arkansas Environmental Response and Liability
7 Trust Fund.

8
9 8-7-1316. Lien for expenditures and value of improvements.

10 (a)(1) If the owner of real property that is the location of an
11 environmental response site upon which response action is performed under
12 this subchapter is liable, in whole or in part, for any costs expended by the
13 Arkansas Department of Environmental Quality to address the release or
14 threatened release of a hazardous substance or a pollutant or contaminant,
15 then there shall exist a lien upon that real property for the amount of money
16 expended by the department.

17 (2) If the expenditure results in an increase in the value of
18 the liable party's property, the lien shall also be for the increase in
19 value.

20 (b) The lien shall be effective upon the filing by the Director of the
21 Arkansas Department of Environmental Quality of a notice of lien with the
22 circuit clerk in the county in which the real property is located.

23 (c) The lien obtained under this section shall not exceed:

24 (1) The amount of money expended, as itemized on an affidavit of
25 expenditures attached to and filed with the notice of lien; and

26 (2) The increase in property value, if any, as a result of the
27 response action taken, as determined by an independent appraisal, a copy of
28 which shall be attached to and filed with the notice of lien.

29 (d) The notice of lien shall be filed within one hundred twenty (120)
30 days after the date of the last act performed on the property by the
31 department or its agent under this subchapter.

32 (e) Upon filing of the notice of lien, a copy with attachments shall
33 be served upon the property owner in the manner provided for enforcement of
34 mechanics' or materialmen's liens.

35 (f) Any and all moneys recovered or reimbursed under this section
36 shall be deposited into the Arkansas Emergency Response and Liability Trust

1 Fund.

2
3 8-7-1317. Punitive damages.

4 (a) If any person who is liable for a release or threatened release of
5 a hazardous substance or a pollutant or contaminant fails without sufficient cause to properly
6 provide response action upon order of the Arkansas Department of Environmental Quality, the
7 person may be liable to the state for punitive damages in an amount equal to three (3) times the
8 amount of any costs incurred by the state as a result of the failure to take proper action.

9 (b) All punitive damages collected under this section shall be deposited into the Arkansas
10 Environmental Response and Liability Trust Fund.

11
12 8-7-1318. Fees on the generation of hazardous waste.

13 (a) On or before March 1 of each year, the following persons shall report to the Director
14 of the Arkansas Department of Environmental Quality except as provided in this section on forms
15 prescribed by the Arkansas Department of Environmental Quality the total amount of hazardous
16 wastes each of them has generated or accepted:

17 (1) Every person that generated hazardous wastes in the State of
18 Arkansas during the preceding year; and

19 (2) Every person that accepted for treatment, storage, or
20 disposal in the State of Arkansas during the preceding year hazardous wastes
21 generated outside the state.

22 (b)(1)(A) Except as provided in this section, there is assessed a fee to be collected by
23 the department upon every person that generated hazardous wastes in the State of Arkansas or
24 that accepted hazardous wastes generated outside of the state which were subsequently
25 received for treatment, storage, or disposal in the State of Arkansas based upon the combined
26 total of the wastes required to be reported under subsection (a) of this section.

27 (B) The fees shall be calculated and paid according to a
28 schedule to be adopted by regulation of the Arkansas Pollution Control and
29 Ecology Commission, not to exceed fifteen thousand dollars (\$15,000) annually
30 per facility.

31 (2)(A) No person may be required to pay fees based on the
32 quantity of hazardous wastes generated if the wastes are:

33 (i) Managed in a totally enclosed treatment
34 facility, an elementary neutralization unit, or a wastewater treatment unit;
35 or

36 (ii) Otherwise excluded by regulation from inclusion

1 in a facility's determination of its compliance status or category as a
 2 generator.

3 (B) Any person that has paid the fees for wastes generated in
 4 1997 or later years shall be entitled to a refund upon application for a
 5 refund.

6 (C) The department shall calculate the amount of fee refund due
 7 and provide the applicant with a copy of the calculation.

8 (c) The department shall promptly pay any refund due from the Arkansas
 9 Environmental Response and Liability Act.

10 (d) On or before July 1 of each year, each person subject to subsection (a) of this
 11 section shall pay to the department the fee required by subsection (b) of this section.

12 (e)(1) To the extent practicable, the department shall coordinate the reporting
 13 requirements of this section with the reporting requirements of the Arkansas Hazardous Waste
 14 Management Act of 1979, § 8-7-201 et seq., and the regulations adopted under that act.

15 (2) The content of the reporting shall be consistent with federal reporting
 16 requirements under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et
 17 seq., as in effect January 1, 2005, in all respects with the exception of frequency.

18 (f) The department shall prepare annually a statement of:

19 (1) All:

20 (A) Revenues collected by the fees under this section;

21 (B) Other revenues to the fund;

22 (C) Expenditures from the fund; and

23 (D) Obligations of the fund; and

24 (2) The current balance in the fund.

25
 26 8-7-1319. Appeals.

27 Except as otherwise provided in this subchapter, an appeal may be taken from any final
 28 order of the Arkansas Department of Environmental Quality under this subchapter as provided in
 29 §§ 8-4-222 -- 8-4-229 and in accordance with regulations promulgated by the Arkansas Pollution
 30 Control and Ecology Commission under this subchapter.

31
 32 8-7-1320. Contribution.

33 (a) Any person that has undertaken or is undertaking response action at an
 34 environmental response site in response to an administrative or judicial order initiated against
 35 the person under the authority provided in
 36 § 8-7-1307, § 8-7-1308, or § 8-7-1104(d), may obtain contribution from any other person that

1 is liable for the environmental response site.

2 (b) Any person that has resolved all or a portion of the person's liability for an
 3 environmental response site by undertaking response action pursuant to an administrative or
 4 judicially approved settlement may obtain contribution from any other person that is liable for
 5 the environmental response site and is not a party to the settlement.

6 (c) Those persons identified under § 8-7-1313(a) shall be the persons liable for the
 7 response action at an environmental response site.

8 (d)(1) An action for contribution may be brought in the circuit court of the county in
 9 which the environmental response site is located.

10 (2) In resolving contribution claims, the court shall allocate the costs and
 11 expenses incurred or to be incurred by the contribution claimant or claimants for undertaking
 12 remedial action among all persons liable for the environmental response site using such
 13 equitable factors as the court determines are appropriate.

14 (e)(1) Any person that has resolved all or a portion of the person's liability for an
 15 environmental response site by undertaking response action pursuant to an administrative or
 16 judicial proceeding or settlement shall not be liable for claims for contribution regarding matters
 17 addressed in the order or settlement that have been satisfactorily resolved.

18 (2) The order or settlement does not discharge any of the other persons liable for
 19 the environmental response site that did not undertake or participate in the remedial action,
 20 unless the terms of the order or settlement so provide.

21 (f)(1) No action for contribution may be commenced more than three (3) years after the
 22 date of the administrative or judicial order or settlement with respect to the response action.

23 (2) In any such action, the court shall enter a declaratory judgment on liability
 24 that will be binding on any subsequent action to recover costs and expenses for response action.

25 (g) In any action for contribution, judicial review of any issues concerning the adequacy
 26 of the remedial action shall be limited to the administrative record to determine whether the
 27 selected remedy contained in the order or settlement is arbitrary or capricious, and then only
 28 such costs and expenses as are found to be inconsistent with those terms of the administrative
 29 or judicial order or settlement found to be arbitrary or capricious may be disallowed.

30 (h) The provisions of this subsection shall apply to any remedial action taken pursuant to
 31 an administrative or judicial order issued under the authority of the Remedial Action Trust Fund
 32 Act, § 8-7-501 et. seq.

33 (i) This section shall apply to any claim for contribution initiated after March 8, 1989.

34
 35 8-7-1321. Site access for response action.

36 (a) For purposes of responding to an administrative or judicial order or settlement

1 entered under § 8-7-1307 or § 8-7-1308, the owner or operator of a facility that is an
 2 environmental response site, or any person that otherwise controls access to the facility shall
 3 provide access to the Arkansas Department of Environmental Quality, any employee of the
 4 department, or any other person designated by the Director of the Arkansas Department of
 5 Environmental Quality who undertakes activities required to carry out the terms of the order or
 6 settlement.

7 (b) A person that impedes or interferes with a person that is entitled to site access for
 8 the purpose of conducting response action at an environmental response site pursuant to the
 9 terms of an administrative or judicial order or settlement may be assessed a civil penalty by the
 10 court in a judicial proceeding for a site access injunction of up to twenty-five thousand dollars
 11 (\$25,000) per day that site access is impeded.

12 (c) A person that impedes or interferes with a person that is entitled to site access for
 13 the purpose of conducting response action at an environmental response site pursuant to the
 14 terms of an administrative or judicial order or settlement may be assessed an administrative civil
 15 penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) per day that site
 16 access is impeded.

17 (d) A person that knowingly impedes or interferes with a person that is entitled to site
 18 access for the purpose of conducting response action at an environmental response site pursuant
 19 to the terms of an administrative or judicial order or settlement shall be guilty of a misdemeanor
 20 punishable by a fine of up to one thousand dollars (\$1,000) or imprisonment for up to one (1)
 21 year, or both.

22
 23 8-7-1322. Liability for actions relating to response actions.

24 (a) No shareholder, director, or officer of a corporation whose sole purpose, as stated in
 25 its articles of incorporation, or a grantor or trustee of a trust whose sole purpose, as stated in its
 26 trust agreement, is to conduct remedial action at an environmental response site pursuant to an
 27 administrative or judicial order or settlement under § 8-7-1308 shall be liable to any person for
 28 any action of the corporation or trust reasonably related to the stated purpose of the corporation
 29 or trust.

30 (b) This section shall not apply to any action of the corporation or trust resulting from
 31 the gross negligence or intentional misconduct of a shareholder, director, or officer of the
 32 corporation or a grantor or trustee of the trust.

33 (c) Nothing in this section shall be construed to alter the liability of any person for the
 34 environmental response site under this subchapter, nor shall the liability of any such person be
 35 expanded as a result of the person's undertaking remedial action or serving as a shareholder,
 36 officer, or director of a corporation or as a grantor or trustee of a trust that undertakes remedial

1 action pursuant to an administrative or judicial order or settlement under § 8-7-1308.

2
3 8-7-1323. Recycling transactions.

4 (a)(1) As used in this section, "recyclable material" means scrap paper, scrap plastic,
5 scrap glass, scrap textiles, scrap rubber other than whole tires, scrap metal, or spent lead-acid,
6 spent nickel-cadmium, and other spent batteries as well as minor amounts of material incident to
7 or adhering to the scrap material as a result of its normal and customary use before becoming
8 scrap.

9 (2) However, "recyclable material" does not include:

10 (A) Shipping containers of a capacity from thirty liters
11 (30 l) to three thousand liters (3,000 l), whether intact or not, continuing
12 any hazardous substance, except metal bits and pieces or hazardous substances
13 that form an integral part of the container or are contained on or adhering
14 to the container; or

15 (B) Any item of material that contains polychlorinated
16 biphenyls at a concentration in excess of fifty parts per million (50 ppm) or
17 any new standard promulgated by the Arkansas Pollution Control and Ecology
18 Commission.

19 (b) The purposes of this section are to:

20 (1) Promote the reuse and recycling of scrap material in the
21 State of Arkansas while protecting human health and the environment;

22 (2) Promote the goals of the Arkansas Pollution Prevention Act,
23 § 8-10-201 et seq., and related Arkansas legislation intended to encourage
24 recycling;

25 (3) Create greater equity in the statutory treatment of recycled
26 versus virgin materials;

27 (4) Remove the disincentives and impediments to recycling in the
28 State of Arkansas created as an unintended consequence of certain liability
29 provisions contained in this subchapter; and

30 (5) Incorporate into this subchapter amendments to the federal
31 Comprehensive Environmental Response, Compensation, and Liability Act of 1980
32 as in effect January 1, 2005, thus ensuring that Arkansas law does not
33 contain more stringent provisions than federal law.

34 (c)(1) For purposes of subsections (d) - (f) of this section, a person that arranged for
35 recycling of recyclable material is not liable under this subchapter with respect to the recyclable
36 materials.

1 (2) Nothing in this section affects the liability of a person
 2 under this subchapter with respect to materials that are not recyclable
 3 materials as defined in this section.

4 (d) Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap
 5 rubber other than whole tires is be deemed to be arranging for recycling of recyclable materials if
 6 the person that arranged for the transaction by selling recyclable material or otherwise arranging
 7 for the recycling of recyclable material can demonstrate by a preponderance of the evidence that
 8 all of the following criteria were met at the time of the transaction:

9 (1) The recyclable material met a commercial specification
 10 grade;

11 (2) A market existed for the recyclable material;

12 (3) A substantial portion of the recyclable material was made
 13 available for use as feedstock for the manufacture of a salable new product;

14 (4) The recyclable material could have been a replacement or
 15 substitute for a virgin raw material or the product to be made from the
 16 recyclable material could have been a replacement or substitute for a product
 17 made, in whole or in part, from virgin raw material;

18 (5) For transactions occurring ninety (90) days or more after
 19 August 13, 2001, the person exercised reasonable care to determine that the
 20 facility where the recyclable material was handled, processed, reclaimed, or
 21 otherwise managed by another person, that is, a consuming facility, was in
 22 compliance with substantive, not procedural or administrative, provisions of
 23 any federal, state, or local environmental law or regulation or compliance
 24 order or decree issued pursuant to those laws or regulations and applicable
 25 to the handling, processing, reclamation, storage, or other management
 26 activities associated with recyclable material; and

27 (6) For purposes of this subsection, reasonable care shall be
 28 determined using criteria that include:

29 (A) The price paid in the recycling transaction;

30 (B) The ability of the person to detect the nature of the
 31 consuming facility's operations concerning its handling, processing,
 32 reclamation, or other management activities associated with recyclable
 33 material; and

34 (C)(i) The result of inquiries made to the appropriate
 35 federal, state, or local environmental agency regarding the consuming
 36 facility's past and current compliance with substantive, not procedural or

1 administrative, provisions of any federal, state, or local environmental law
 2 or regulation or compliance order or decree issued pursuant to those laws or
 3 regulations and applicable to the handling, processing, reclamation, storage,
 4 or other management activities associated with the recyclable material.

5 (ii) For the purposes of this subsection, a
 6 requirement to obtain a permit applicable to the handling, processing,
 7 reclamation, or other management activity associated with the recyclable
 8 materials is be deemed to be a substantive provision.

9 (e)(1) Transactions involving scrap metal are deemed to be arranging for recycling if the
 10 person that arranged for the transaction by selling recyclable material or otherwise arranging for
 11 the recycling of recyclable material can demonstrate by a preponderance of the evidence that at
 12 the time of the transaction the person:

13 (A) Met the criteria set forth in subsection (d) of this
 14 section with respect to the scrap metal;

15 (B) Was in compliance with any applicable regulations or
 16 standards regarding the storage, transport, management, or other activities
 17 associated with the recycling of scrap metal that the commission promulgates
 18 subsequent to the enactment of this section and with regard to transactions
 19 occurring after the effective date of those regulations or standards; and

20 (C) Did not melt the scrap metal before the transaction.

21 (2) For purposes of subdivision (e)(1)(C) of this section,
 22 melting of scrap metal does not include the thermal separation of two (2) or
 23 more materials due to differences in their melting points, a process referred
 24 to as "sweating".

25 (3) Except for scrap metals that the United States Environmental
 26 Protection Agency or the commission excludes from this definition by
 27 regulation, for purposes of this subsection (e), "scrap metal" means:

28 (A) Bits and pieces of metal parts, such as bars,
 29 turnings, rods, sheets, or wire; and

30 (B) Metal pieces that may be combined together with bolts
 31 or soldering, such as radiators, scrap automobiles, or railroad box cars,
 32 which when worn or superfluous can be recycled.

33 (f) Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries, or
 34 other spent batteries are deemed to be arranging for recycling if the person that arranged for the
 35 transaction by selling recyclable material or otherwise arranging for the recycling of recyclable
 36 material can demonstrate by a preponderance of the evidence that at the time of the

1 transaction:

2 (1) The person:

3 (A) Met the criteria set forth in subsection (d) of this
 4 section with respect to the spent lead-acid batteries, spent nickel-cadmium
 5 batteries, or other spent batteries but did not recover the valuable
 6 components of those batteries; and

7 (B) With respect to transactions involving lead-acid
 8 batteries, was in compliance with applicable federal and Arkansas
 9 environmental regulations or standards regarding the storage, transport,
 10 management, or other activities associated with the recycling of spent lead-
 11 acid batteries;

12 (2) With respect to transactions involving nickel-cadmium
 13 batteries, federal and Arkansas environmental regulations or standards were
 14 in effect regarding the storage, transport, management, or other activities
 15 associated with the recycling of spent nickel-cadmium batteries, and the
 16 person was in compliance with applicable regulations or standards; or

17 (3) With respect to transactions involving other spent
 18 batteries, federal and Arkansas environmental regulations or standards were
 19 in effect regarding the storage, transport, management, or other activities
 20 associated with the recycling of those batteries, and the person was in
 21 compliance with applicable regulations or standards.

22 (g)(1) The exemptions set forth in subsections (d) - (f) of this section shall not apply if
 23 the person:

24 (A) Had an objectively reasonable basis to believe at the
 25 time of the recycling transaction:

26 (i) That the recyclable material would not be
 27 recycled;

28 (ii) That the recyclable material would be burned as
 29 fuel or for energy recovery or incineration; or

30 (iii) For transactions occurring more than ninety
 31 (90) days after August 13, 2001, that the consuming facility was not in
 32 compliance with a substantive, not procedural or administrative, provision of
 33 any federal, Arkansas, or local environmental law or regulation or compliance
 34 order or decree issued pursuant to those laws or regulations and applicable
 35 to the handling, processing, reclamation, or other management activities
 36 associated with the recyclable material;

1 (B) Had reason to believe that hazardous substances had
 2 been added to the recyclable material for purposes other than processing for
 3 recycling; or

4 (C) Failed to exercise reasonable care with respect to the
 5 management and handling of the recyclable material including adhering to
 6 customary industry practices current at the time of the recycling transaction
 7 designed to minimize, through source control, contamination of the recyclable
 8 material by hazardous substances.

9 (2) For purposes of this subsection (g), an objectively
 10 reasonable basis for belief shall be determined using criteria that include:

11 (A) The size of the person's business;

12 (B) Customary industry practices including customary
 13 industry practices current at the time of the recycling transaction designed
 14 to minimize, through source control, contamination of the recyclable material
 15 by hazardous substances;

16 (C) The price paid in the recycling transaction; and

17 (D) The ability of the person to detect the nature of the
 18 consuming facility's operations concerning its handling, processing,
 19 reclamation, or other management activities associated with the recyclable
 20 material.

21 (3) For purposes of this subsection (g), a requirement to obtain
 22 a permit applicable to the handling, processing, reclamation, or other
 23 management activities associated with recyclable material is deemed to be a
 24 substantive provision.

25 (h) The commission is authorized to promulgate additional regulations concerning this
 26 section.

27 (i) The exemptions provided in this section shall not affect any concluded judicial or
 28 administrative action or any pending judicial action initiated by the State of Arkansas before the
 29 effective date of this section.

30 (j)(1) Any person who commences an action in contribution against a person that is not
 31 liable by operation of this section shall be liable to that person for all reasonable costs of
 32 defending that action, including all reasonable attorney's and expert witness fees.

33 (2) For the purpose of this subsection (j), "person" does not
 34 include an agency, board, commission, or department of the State of Arkansas.

35 (k) Nothing in this section shall affect:

36 (1) Liability under any other federal, state, or local statute

1 or regulation promulgated under any such statute including any requirements
 2 promulgated by the commission under the Arkansas Hazardous Waste Management
 3 Act of 1979, § 8-7-201 et seq.; or

4 (2) The ability of the commission to promulgate regulations
 5 under any other statute, including the Arkansas Hazardous Waste Management
 6 Act of 1979, § 8-7-201 et seq.

7 (l) Nothing in this section shall be construed to:

8 (1) Affect any defenses or liabilities of any person to which
 9 subdivision (b)(1) of this section does not apply; or

10 (2) Create any presumption of liability against any person to
 11 which subdivision (b)(1) of this section does not apply.

12
 13 8-7-1324. Application.

14 The provisions of this subchapter are remedial and shall apply to acts
 15 that occurred before and after the effective date of this subchapter.

16
 17 SECTION 17. Arkansas Code § 15-5-901(b), concerning expenditures from
 18 the Construction Assistance Revolving Loan Fund, is amended to read as
 19 follows:

20 (b) Moneys in the fund shall be expended in a manner consistent with
 21 the terms and conditions of applicable federal and state capitalization
 22 grants and may be used:

23 (1) To provide loans for the planning, design, acquisition,
 24 construction, expansion, equipping, rehabilitation, consolidation, or
 25 refinancing of wastewater systems, water systems, solid and hazardous waste
 26 facilities, recycling facilities, nonpoint source management facilities,
 27 wetlands conservation and management facilities, and other environmental
 28 projects or parts of environmental projects in the fund;

29 (2) Subject to the provisions of subsection (c) of this section
 30 and subject to the approval of the commission, to secure the payment of the
 31 principal of and premium, if any, and interest on and to pay costs incurred
 32 in connection with bonds issued by the commission or the authority, if
 33 proceeds of the bonds are deposited into the Construction Assistance
 34 Revolving Loan Fund Account;

35 (3) To purchase bonds, notes, or other evidences of indebtedness
 36 issued by local governmental entities to finance or refinance wastewater

1 system projects, water systems, solid and hazardous waste facilities,
 2 recycling facilities, nonpoint source management facilities, wetlands
 3 conservation and management facilities, and other environmental projects or
 4 parts of environmental projects;

5 (4) To fund other wastewater system programs, water system
 6 programs, solid and hazardous waste facilities programs, recycling programs,
 7 nonpoint source management facilities, wetlands conservation and management
 8 facilities, and other environmental programs that the federal or state
 9 government may allow in the future;

10 (5) To fund the administrative expenses of the commission
 11 relating to the responsibilities and requirements of this subchapter;

12 (6) To provide for any other expenditures consistent with
 13 applicable federal and state law;

14 ~~(7) To provide loans to prospective and actual purchasers of~~
 15 ~~abandoned industrial, commercial, or agricultural sites for assessments,~~
 16 ~~investigations, and remedial actions pursuant to § 8-7-1101;~~

17 ~~(8)~~(7) To pay the principal of and premium, if any, and interest
 18 on and to pay costs incurred in connection with bonds issued by the
 19 commission or the authority, if proceeds of the bonds are deposited in the
 20 Construction Assistance Revolving Loan Fund Account;

21 ~~(9)~~(8) To make grants or loans to the Safe Drinking Water Fund
 22 established by § 15-22-1102 in such amounts as may be approved by the
 23 commission, consistent with applicable federal law; or

24 ~~(10)~~(9) Subject to the provisions of subsection (c) of this
 25 section and subject to the approval of the commission, to secure the payment
 26 of the principal of and premium, if any, and interest on bonds issued by the
 27 commission or the authority, if proceeds of the bonds are deposited into the
 28 Drinking Water State Revolving Loan Fund Account established by § 15-22-1102,
 29 consistent with applicable federal law.

30
 31 SECTION 18. Arkansas Code § 15-5-901(d)-(h), concerning the
 32 Construction Assistance Revolving Loan Fund, are amended to read as follows:

33 ~~(d)(1) There is established a separate account within the fund,~~
 34 ~~designated the "Remedial Action Account", into which moneys identified in §~~
 35 ~~8-7-504(c) and any other moneys as designated by the Director of the Arkansas~~
 36 ~~Department of Environmental Quality shall be deposited.~~

1 ~~(2) Moneys in the Remedial Action Account may be expended as~~
 2 ~~authorized in § 8-7-1101 and for the same purposes as other moneys in the~~
 3 ~~fund.~~

4 ~~(e)(1)~~(d)(1) There is established a separate account within the fund,
 5 designated the "Construction Assistance Administrative Account", into which
 6 shall be deposited:

7 (A) Moneys provided by the federal government pursuant to
 8 the federal environmental acts for the purpose of administering programs
 9 funded by the federal environmental acts; and

10 (B) Fees pursuant to § 15-5-904.

11 (2) Moneys in the Construction Assistance Administrative Account
 12 may be expended by the commission for administrative costs of programs funded
 13 by the federal environmental acts.

14 (3) Moneys in the Construction Assistance Administrative Account
 15 shall never be pledged to the payment of or as security for any bonds issued
 16 by the authority or the commission.

17 ~~(f)(1)~~(e)(1) There is established a separate account within the fund,
 18 designated the "Construction Assistance Revolving Loan Fund Account", into
 19 which shall be deposited moneys provided by:

20 (A) The federal government pursuant to the federal
 21 environmental acts;

22 (B) Proceeds of bonds issued by the commission or the
 23 authority; and

24 (C) Other amounts, excluding state appropriations,
 25 received under § 15-5-903 for the purpose of providing financial assistance
 26 to local governmental entities and other owners of environmental projects in
 27 connection with the planning, design, acquisition, construction, expansion,
 28 equipping, or rehabilitation of wastewater systems projects, water systems,
 29 solid and hazardous waste facilities, recycling facilities, nonpoint source
 30 management facilities, wetlands conservation and management facilities, and
 31 other environmental projects or parts of environmental projects.

32 (2) Moneys in the Construction Assistance Revolving Loan Fund
 33 Account may also be expended for the purposes set forth in subdivisions
 34 (b)(1)-(5) and (b)(7)-(10) of this section.

35 ~~(g)(f)~~ The commission may establish and maintain additional accounts
 36 within the fund or subaccounts within the accounts established in this

1 section.

2 ~~(h)~~(g) The commission shall maintain the fund at the authority or at
 3 one (1) or more financial institutions within or without the state.

4

5 SECTION 19. Arkansas Code § 15-5-1504(a), concerning the types of
 6 money's which shall be deposited directly into the Brownfield Revolving Loan
 7 Fund, is amended to read as follows:

8 (a) The following moneys shall be deposited directly into the
 9 Brownfield Revolving Loan Fund:

10 (1) Grants from the federal government or federal agencies
 11 allotted to the state for capitalization of the Brownfield Revolving Loan
 12 Fund;

13 (2) State matching grants;

14 (3) Proceeds of bonds issued by the Arkansas Development Finance
 15 Authority under this subchapter;

16 (4) Loan payments of principal, interest, and premiums under
 17 this subchapter;

18 (5) Any money received from the ~~Hazardous Substance Remedial~~
 19 ~~Action Trust Fund~~ Arkansas Environmental Response and Liability Trust Fund;

20 (6) Any money received by the state as a gift or donation to the
 21 Brownfield Revolving Loan Fund;

22 (7) Any interest earned upon money deposited into the Brownfield
 23 Revolving Loan Fund; and

24 (8) Any other money legally designated for the Brownfield
 25 Revolving Loan Fund.

26

27 SECTION 20. Arkansas Code § 19-5-929 is repealed:

28 ~~19-5-929. Emergency Response Fund.~~

29 ~~(a) There is established on the books of the Treasurer of State, the~~
 30 ~~Auditor of State, and the Chief Fiscal Officer of the State a trust fund to~~
 31 ~~be known as the Emergency Response Fund.~~

32 ~~(b) This fund shall consist of all moneys received as penalties~~
 33 ~~pursuant to §§ 8-4-101—8-4-106, 8-4-201—8-4-229, 8-4-301—8-4-313, 8-4-~~
 34 ~~401—8-4-409, 8-6-201—8-6-214, 8-7-201—8-7-226, as may be provided by~~
 35 ~~law, there to be administered by the Director of the Arkansas Department of~~
 36 ~~Environmental Quality for those purposes as may be provided by law.~~

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SECTION 21. Arkansas Code § 19-5-930 is repealed:

~~19-5-930. Hazardous Substance Remedial Action Trust Fund.~~

~~(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the Hazardous Substance Remedial Action Trust Fund.~~

~~(b) This fund shall consist of all moneys appropriated by the General Assembly to the Hazardous Substance Remedial Action Trust Fund, gifts, donations, interest earnings, fees on the generation of hazardous waste, punitive damages, penalties, and any other moneys legally designated, with the exception of those moneys deposited in the Environmental Education Fund as set out in § 8-7-509(d), there to be administered by the Director of the Arkansas Department of Environmental Quality as provided in § 8-7-509.~~

SECTION 22. Arkansas Code § 19-5-1027(b), concerning the Environmental Education Fund, is amended to read as follows:

(b) This fund shall consist of that portion of moneys transferred, not to exceed two hundred seventy-five thousand dollars (\$275,000) per fiscal year, from the ~~Hazardous Substance Remedial Action Trust Fund~~ Arkansas Environmental Response and Liability Trust Fund as set out in ~~§ 8-7-509~~ § 8-7-1310, there to be used by the Arkansas Department of Environmental Quality to provide environmental educational materials and training.

SECTION 23. Arkansas Code § 20-27-1002(b), concerning penalties collected for violations of the Removal of Asbestos Material Act, is amended to read as follows:

(b) All moneys collected as civil penalties shall be deposited in the ~~Emergency Response Fund~~ Arkansas Environmental Response and Liability Trust Fund as provided by ~~§ 8-7-410(b)(1)~~ § 8-7-1310.

SECTION 24. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the Supreme Court of Arkansas rendered a decision in the matter of Arkansas Department of Environmental Quality v. Brighton Corp., et al, 352 Ark. 396, 102 S.W.3d 458 (April 3, 2003), which created an “innocent customer defense” to the Remedial Action Trust Fund Act, § 8-7-501 et seq. and made it difficult for the Arkansas

1 Department of Environmental Quality to meet its mission to protect, enhance,
2 and restore the natural environment for the well-being of all Arkansans. It
3 is further found and determined by the General Assembly that the action of
4 the Arkansas Supreme Court has brought into question authorization of the
5 state's hazardous waste management program by the United States Environmental
6 Protection Agency and left unresolved certain issues addressed by the lower
7 court decision. Therefore, an emergency is declared to exist and this act
8 being immediately necessary for the preservation of the public peace, health,
9 and safety shall become effective on July 1, 2005, and shall apply
10 retroactively.

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