

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 87th General Assembly  
3 Regular Session, 2009  
4

# A Bill

HOUSE BILL 1416

5 By: Representative Reep  
6 By: Senator P. Malone  
7

## For An Act To Be Entitled

10 AN ACT TO ELIMINATE ANNUAL SELF-AUDIT REPORTING  
11 FOR REGULATED STORAGE TANK OWNERS AND OPERATORS;  
12 AND FOR OTHER PURPOSES.  
13

## Subtitle

14 AN ACT TO ELIMINATE ANNUAL SELF-AUDIT  
15 REPORTING FOR REGULATED STORAGE TANK  
16 OWNERS AND OPERATORS.  
17  
18  
19

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

22 SECTION 1. Arkansas Code § 8-7-801 is amended to read as follows:

23 8-7-801. Definitions and exceptions.

24 As used in this subchapter:

25 (1)(A) "Aboveground storage tank" means any one (1) or a  
26 combination of containers, vessels, and enclosures located aboveground,  
27 including structures and appurtenances connected to them, whose capacity is  
28 greater than one thousand three hundred twenty gallons (1,320 gals.) and not  
29 more than forty thousand gallons (40,000 gals.) and that is used to contain  
30 or dispense motor fuels, distillate special fuels, or other refined petroleum  
31 products.

32 (B) ~~Such term~~ "Aboveground storage tank" does not include  
33 mobile storage tanks used to transport petroleum from one location to another  
34 or those used in the production of petroleum or natural gas;

35 (2) "Adjacent property owner" means any person, other than an  
36 owner or operator, owning an interest in any property affected by a release;



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

3 (4) "Department" means the Arkansas Department of Environmental  
 4 Quality;

5 (5) "Operator" means any person in control of or having  
 6 responsibility for the daily operation of an underground storage tank;

7 (6)(A) "Owner" means:

8 (i) In the case of an underground storage tank in  
 9 use on November 8, 1984, or brought into use after that date, any person who  
 10 owns an underground storage tank used for the storage, use, or dispensing of  
 11 regulated substances; and

12 (ii) In the case of any underground storage tank in  
 13 use before November 8, 1984, but no longer in use on that date, any person  
 14 who owned ~~such~~ the tank immediately before the discontinuation of its use.

15 (B) "Owner" does not include any person who, without  
 16 participation in the management of an underground storage tank, holds indicia  
 17 of ownership primarily to protect a security interest in the tank;

18 (7) "Person" means any individual, corporation, company, firm,  
 19 partnership, association, trust, joint-stock company or trust, venture, or  
 20 municipal, state, or federal government or agency, or any other legal entity,  
 21 however organized;

22 (8) "Petroleum" means petroleum, including crude oil or any  
 23 fraction thereof, that is liquid at standard conditions of temperature and  
 24 pressure (sixty degrees Fahrenheit (60° F) and fourteen and seven-tenths  
 25 pounds (14.7 lbs.) per square inch absolute);

26 (9) "Regulated substance" means:

27 (A) Any substance defined in section 101(14) of the  
 28 Comprehensive Environmental Response, Compensation, and Liability Act of  
 29 1980, but not including any substance regulated as a hazardous waste under  
 30 Subtitle C of the Resource Conservation and Recovery Act of 1976; and

31 (B) Petroleum;

32 (10)(A) "Release" means any spilling, leaking, emitting,  
 33 discharging, escaping, leaching, or disposing from an underground storage  
 34 tank into groundwater, surface water, or subsurface soils.

35 (B) "Release" does not include releases that are permitted  
 36 or authorized by the department or by federal law;

1 (11) "Secondary containment" means a release prevention and  
 2 release detection system for an underground storage tank or piping, or both,  
 3 that provides an inner barrier and an outer barrier and an interstitial space  
 4 between the two (2) barriers for monitoring to detect the presence of a leak  
 5 or release of regulated substances from the underground storage tank or  
 6 piping, or both;

7 (12) "Storage tank" means an aboveground storage tank or  
 8 underground storage tank as defined in this subchapter; and

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

12 ~~(B) The storage tank self inspection audit shall accompany~~  
 13 ~~or be a part of other documents the department requires the owner or operator~~  
 14 ~~to execute on an annual basis; and~~

15 ~~(14)(13)(A)~~ "Underground storage tank" means any one (1) or  
 16 combination of tanks, including underground pipes connected thereto, which is  
 17 or has been used to contain an accumulation of regulated substances, and the  
 18 volume of which, including the volume of the underground pipes connected  
 19 thereto, is ten percent (10%) or more beneath the surface of the ground.

20 ~~Such term~~ (B) "Underground storage tank" does not include any:

21 ~~(A)(i)~~ Farm or residential tank of one thousand one  
 22 hundred gallons (1,100 gals.) or less capacity used for storing motor fuel  
 23 for noncommercial purposes;

24 ~~(B)(ii)~~ Tank used for storing heating oil for  
 25 consumptive use on the premises where stored;

26 ~~(C)(iii)~~ Septic tank;

27 ~~(D)(iv)~~ Pipeline facility, including gathering  
 28 lines, regulated under:

29 ~~(i)(a)~~ The Natural Gas Pipeline Safety Act of  
 30 1968; and

31 ~~(ii)(b)~~ The Hazardous Liquid Pipeline Safety  
 32 Act of 1979;

33 ~~(E)(v)~~ Surface impoundment, pit, pond, or lagoon;

34 ~~(F)(vi)~~ Storm water or wastewater collection system;

35 ~~(G)(vii)~~ Flow-through process tank;

36 ~~(H)(viii)~~ Liquid trap or associated gathering lines

1 directly related to oil or gas production and gathering operations;  
 2 ~~(I)(ix)~~ Storage tank situated in an underground  
 3 area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if  
 4 the storage tank is situated upon or above the surface of the floor; or

5 ~~(J)(x)~~ Pipes connected to any tank that is described  
 6 in subdivisions ~~(14)(A)-(I)~~ (13)(B)(i)-(Ix) of this section.

7  
 8 SECTION 2. Arkansas Code § 8-7-815 is repealed.

9 ~~8-7-815. Storage tank self inspection audit.~~

10 ~~(a) All owners and operators of storage tanks shall complete and~~  
 11 ~~submit an annual storage tank self inspection audit in a manner and in~~  
 12 ~~accordance with a schedule determined by the Arkansas Department of~~  
 13 ~~Environmental Quality.~~

14 ~~(b) The department shall implement the requirements of this section in~~  
 15 ~~a manner that allows the storage tank self inspection audit to accompany or~~  
 16 ~~be part of other documents the department requires to be submitted on an~~  
 17 ~~annual basis.~~

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

20  
 21 SECTION 3. Arkansas Code § 8-7-902 is amended to read as follows:

22 8-7-902. Definitions.

23 As used in this subchapter:

24 (1)(A) "Aboveground storage tank" means any one (1) or a  
 25 combination of containers, vessels, and enclosures located aboveground,  
 26 including structures and appurtenances connected to them, the capacity of  
 27 which is greater than one thousand three hundred twenty gallons (1,320 gals.)  
 28 and not more than forty thousand gallons (40,000 gals.) and that is used to  
 29 contain or dispense motor fuels, distillate special fuels, or other refined  
 30 petroleum products.

31 (B) ~~The term "aboveground storage tank"~~ "Aboveground  
 32 storage tank" does not include mobile storage tanks used to transport  
 33 petroleum from one (1) location to another or those used in the production of  
 34 petroleum or natural gas;

35 (2) "Accidental release" means any sudden or nonsudden confirmed  
 36 release of petroleum from a storage tank that results in a need for

1 corrective action or a claim for compensatory damages, or both, neither  
 2 expected nor intended by the tank owner or operator;

3 (3) "Advisory committee" or "committee" means the Advisory  
 4 Committee on Petroleum Storage Tanks as established in this subchapter;

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

7 (5)(A) "Compensatory damages" means all damages for which an  
 8 owner or operator may be liable, including, without limitation, bodily injury  
 9 or property damage.

10 (B) "Compensatory damages" ~~de~~ does not include:

11 (i) Punitive damages; or

12 (ii) The costs of litigation, which shall not be  
 13 limited to attorney or expert witness fees.

14 (C) This definition shall apply to any pending third-party  
 15 claim which has not been reduced to judgment as of April 7, 2003;

16 (6) "Corrective action" means those actions which may be  
 17 necessary to protect human health and the environment as a result of an  
 18 accidental release, sudden or nonsudden;

19 (7) "Department" means the Arkansas Department of Environmental  
 20 Quality;

21 (8) "Director" means the Director of the Arkansas Department of  
 22 Environmental Quality;

23 (9) "Distributor" means and includes any person, including the  
 24 State of Arkansas and any political subdivision thereof, but not including  
 25 the United States of America or any of its instrumentalities, except to the  
 26 extent permitted by the Constitution or laws thereof, who is customarily in  
 27 the wholesale business of offering motor fuels for resale or delivery to  
 28 dealers, consumers, or others in tanks of two hundred gallons (200 gals.) or  
 29 more which are not connected to motor vehicles and is:

30 (A) Making the first sale in the State of Arkansas of any  
 31 motor fuel imported into the state from any other state, territory, or  
 32 foreign country, after it has been received within this state within the  
 33 meaning of § 26-55-201 et seq.;

34 (B) Consuming or using in the State of Arkansas any motor  
 35 fuel so imported and who has purchased it before it has been received by any  
 36 other person in this state, within the meaning of § 26-55-201 et seq.; or

1 (C) Producing, refining, preparing, distilling,  
 2 manufacturing, blending, or compounding motor fuel in this state;

3 (10) "Fund" means the Petroleum Storage Tank Trust Fund created  
 4 by this subchapter;

5 (11) "Occurrence" means an accident, including continuous or  
 6 repeated exposure to conditions, which results in a release from a storage  
 7 tank;

8 (12) "Owner or operator", when the owner and operator are  
 9 separate parties, means the person who ~~is required to~~ shall obtain financial  
 10 assurances under the state or federal underground storage tank program;

11 (13) "Person" means any individual, corporation, company, firm,  
 12 partnership, association, trust, joint-stock company or trust, or venture, or  
 13 municipal, state, or federal government or agency, or any other legal entity,  
 14 however organized;

15 (14) "Petroleum" means petroleum, including crude oil or any  
 16 fraction thereof, which is liquid at standard conditions of temperature and  
 17 pressure of sixty degrees Fahrenheit (60° F) and fourteen and seven-tenths  
 18 pounds per square inch (14.7 psi) absolute;

19 (15)(A) "Release" means any spilling, leaking, emitting,  
 20 discharging, escaping, leaching, or disposing from a storage tank into  
 21 groundwater, surface water, or subsurface soils.

22 (B) The term "release" does not include releases that are  
 23 permitted or authorized by the department or by federal law;

24 (16) "Storage tank" means an aboveground storage tank or  
 25 underground storage tank as defined in this subchapter;

26 ~~(17)(A) "Storage tank self inspection audit" means a checklist~~  
 27 ~~or form issued by the department addressing the compliance status of a~~  
 28 ~~storage tank that the owner or operator completes on an annual basis.~~

29 ~~(B) The storage tank self inspection audit shall accompany~~  
 30 ~~or be a part of other documents the department requires the owner or operator~~  
 31 ~~to execute on an annual basis;~~

32 ~~(18)(A)~~ (17)(A) "Supplier" means any person who is customarily in  
 33 the wholesale business of offering distillate special fuels or liquefied gas  
 34 special fuels for resale or use to any person in this state and who makes  
 35 bulk sales of fuel.

36 (B) The term "supplier" ~~shall include~~ includes pipeline

1 importers, first receivers, and second receivers;

2 (19)(18) "Terminal" means a bulk storage facility for storing  
 3 petroleum products supplied by pipeline or marine vessels;

4 ~~(20)(A)~~(19)(A) "Underground storage tank" means any one (1) or a  
 5 combination of tanks, including underground pipes connected thereto, that is  
 6 or has been used to contain petroleum, and the volume of which, including the  
 7 volume of the underground pipes connected thereto, is ten percent (10%) or  
 8 more beneath the surface of the ground.

9 (B) ~~The term "underground storage tank"~~ "Underground  
 10 storage tank" does not include any:

11 (i) Farm or residential tank of one thousand one  
 12 hundred gallons (1,100 gals.) or less capacity used for storing motor fuel  
 13 for noncommercial purposes;

14 (ii) Tank used for storing heating oil for  
 15 consumptive use on the premises where stored;

16 (iii) Septic tank;

17 (iv) Intrastate and interstate pipeline facilities  
 18 regulated by the Arkansas Public Service Commission or other applicable state  
 19 or federal agency and all other pipeline facilities, including gathering  
 20 lines regulated under:

21 (a) The Natural Gas Pipeline Safety Act of  
 22 1968; or

23 (b) The Hazardous Liquid Pipeline Safety Act  
 24 of 1979;

25 (v) Surface impoundment, pit, pond, or lagoon;

26 (vi) Storm water or wastewater collection system;

27 (vii) Flow-through process tank;

28 (viii) Liquid trap or associated gather lines  
 29 directly related to oil or gas production and gathering operations;

30 (ix) Storage tank situated in an underground area,  
 31 such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the  
 32 storage tank is situated upon or above the surface of the floor; or

33 (x) Any pipes connected to any tank which is  
 34 described in ~~subdivision (20)(B) of this section~~ this subdivision (19)(B);  
 35 and

36 ~~(21)(A)~~(20)(A) "Unknown petroleum storage tank" means a

1 petroleum storage tank as defined by this subchapter whose existence on a  
 2 property or facility at the time of the discovery of a release was not known  
 3 or should not have reasonably been known by the owner or operator.

4 (B) An owner or operator is deemed to have known of the  
 5 existence of an unknown petroleum storage tank if there was surficial  
 6 evidence of such a tank in the form of visible vent pipes, fill caps, or  
 7 lines protruding from the tank.

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 9 SECTION 4. Arkansas Code § 8-7-907 is amended to read as follows:  
 10 8-7-907. Payments for corrective action.

11 (a)(1) No payment for corrective action shall be paid from the  
 12 Petroleum Storage Tank Trust Fund until the owner or operator has expended  
 13 seven thousand five hundred dollars (\$7,500) on corrective action for the  
 14 occurrence, except in cases in which the Director of the Arkansas Department  
 15 of Environmental Quality is using emergency authority under § 8-7-905(e). It  
 16 is the intent of the General Assembly that this initial level of expenditure  
 17 be considered the equivalent of an insurance policy deductible.

18 (2) Owners or operators of underground storage tanks ~~must~~ shall  
 19 demonstrate financial responsibility for the seven-thousand-five-hundred-  
 20 dollar deductible for corrective actions.

21 (b) Payment for corrective action shall not exceed one million five  
 22 hundred thousand dollars (\$1,500,000) per occurrence.

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

25 (1) At the time of discovery of the release, the owner or  
 26 operator had paid all fees required under state law or regulations applicable  
 27 to petroleum storage tanks;

28 (2) The corrective action expenses submitted for reimbursement  
 29 consist of items and amounts that are in accord and compliant with Arkansas  
 30 Department of Environmental Quality regulations; and

31 (3) The owner or operator cooperated fully with the department  
 32 in corrective action to address the release; ~~and~~

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

35 (d) Payment for corrective action may be denied, if the storage tank  
 36 owner or operator; ~~(1) Fails~~ fails to report a release as required by



1 regulation promulgated by the Arkansas Pollution Control and Ecology  
 2 Commission, and the failure to report the release causes a delay in the  
 3 corrective action that contributes to an adverse impact to the environment,  
 4 ~~or~~

5 ~~(2) Submits an inaccurate storage tank self-inspection audit~~  
 6 ~~that results in a delay in the corrective action of a release, and the delay~~  
 7 ~~contributes to an adverse impact to the environment.~~

8 (e)(1) The commission may provide through rule ~~and regulation~~ for  
 9 interim payments for corrective action.

10 (2) Interim payments ~~shall be~~ are subject to these limitations:

11 (A) Proof of compliance with the requirements of  
 12 ~~subdivisions (e)(1)-(4)~~ subsection (c) of this section ~~must~~ shall be  
 13 provided;

14 (B) Specific assurances ~~must~~ shall be provided that an  
 15 approved corrective action plan, department directive, or order is being  
 16 implemented and followed to date; and

17 (C)(i) Interim payments shall consist of payment of an  
 18 amount not to exceed ninety percent (90%) of one million five hundred  
 19 thousand dollars (\$1,500,000).

20 (ii) The remaining ten percent (10%) shall be  
 21 released only upon final payment for corrective action concerning the  
 22 occurrence.

23 (f)(1) ~~In the event~~ If moneys are expended from the fund for  
 24 corrective action and the owner or operator was not at the time of the  
 25 occurrence eligible to receive reimbursement for corrective action, as  
 26 defined by this subchapter and regulations promulgated under this subchapter,  
 27 the department may recover from the owner or operator the amount of moneys  
 28 expended from the fund for corrective action by filing an action in the  
 29 appropriate circuit court or by using the administrative procedures ~~set forth~~  
 30 in under § 8-7-804.

31 (2)(A) The department also has a right of subrogation:

32 (i) To any insurance policies in existence at the  
 33 time of the occurrence to the extent of any rights the owner or operator of a  
 34 site may have had under that policy; and

35 (ii) Against any third party who caused or  
 36 contributed to the occurrence.

1 (B) The right of subrogation shall apply to sites where  
2 corrective action is taken by:

- 3 (i) Owners or operators; or
- 4 (ii) The department.

5 (C) As used in this subsection, "third party" does not  
6 include a former owner or operator of the site where corrective action is  
7 taken.

8 (g)(1) Unknown petroleum storage tanks that have satisfied the  
9 requirements of ~~subdivisions (e)(1)-(4)~~ subsection (c) of this section ~~shall~~  
10 be are eligible for reimbursement for corrective action as provided by this  
11 section if:

12 (A) The unknown petroleum storage tank is discovered while  
13 removing, upgrading, or replacing a petroleum storage tank meeting the  
14 requirements of subsection (c) of this section or while performing petroleum  
15 investigation or corrective action activities required by federal or state  
16 laws and the petroleum storage tank meeting the requirements of subsection  
17 (c) of this section is located on the same property or facility; or

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

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

24 (h) If the owner or operator is found to have been in noncompliance  
25 with any state and federal laws and regulations relating to storage tanks at  
26 the time of the occurrence, the department may assess a penalty in accordance  
27 with its applicable policies and procedures.

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