

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

SENATE BILL 562

4
5 By: Senator Steele
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For An Act To Be Entitled

8
9 AN ACT TO AMEND THE LAW REGARDING VOLUNTARY
10 CLEANUP OF HAZARDOUS WASTE SITES; TO CLARIFY
11 WHICH PROPERTIES AND ACTIVITIES ARE ELIGIBLE FOR
12 PARTICIPATION IN THE VOLUNTARY CLEANUP PROGRAM;
13 AND FOR OTHER PURPOSES.
14

Subtitle

15
16 AN ACT TO AMEND THE LAW REGARDING
17 VOLUNTARY CLEANUP OF HAZARDOUS WASTE
18 SITES.
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20

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

23 SECTION 1. Arkansas Code § 8-7-1101 is amended to read as follows:
24 8-7-1101. Declaration of policy.

25 The General Assembly finds and declares as follows:

26 (1) The redevelopment of abandoned industrial, commercial, ~~or~~
27 agricultural sites, or abandoned residential property should be encouraged as
28 a sound land use management policy to prevent the needless development of
29 prime farmland, open spaces, and natural and recreation areas and to prevent
30 urban sprawl;

31 (2) The redevelopment of abandoned sites should be encouraged so
32 that these sites can be returned to useful, tax-producing properties to
33 protect existing jobs and provide new job opportunities;

34 (3) Persons interested in redeveloping abandoned sites should
35 have a method of determining what their legal liabilities and ~~clean-up~~
36 cleanup responsibilities will be as they plan the reuse of abandoned sites;



1 (4) Incentives should be put in place to encourage prospective
2 purchasers to voluntarily develop and implement ~~clean-up~~ cleanup plans of
3 abandoned sites without the need for adversarial enforcement actions by the
4 Arkansas Department of Environmental Quality;

5 (5) The department now routinely determines, through its
6 permitting policies, when contamination will and will not pose unacceptable
7 risks to public health or the environment, and similar concepts are used in
8 establishing ~~clean-up~~ cleanup policies for abandoned sites;

9 (6) Parties and persons responsible under the law for pollution
10 at abandoned sites should perform remedial responses which are fully
11 consistent with existing requirements;

12 (7) As an incentive to promote the redevelopment of abandoned
13 industrial sites, persons not responsible for preexisting pollution at or
14 contamination on industrial sites should meet alternative ~~clean-up~~ cleanup
15 requirements if they acquire title after the nature of conditions at the site
16 have been disclosed and declare and commit to a specified future land use of
17 the subject site; and

18 (8)(A) Property transactions at times necessitate title
19 acquisition prior to completion of the actions contemplated at § 8-7-1104(b)-
20 (d) by persons not previously involved with the site or otherwise considered
21 responsible parties for environmental conditions at a site.

22 (B) These persons should not be foreclosed from
23 participation under the procedures enacted under this subchapter.

24 (C) Therefore, these persons, at the discretion of the
25 director, may submit a letter of intent that will set forth the persons'
26 desire to purchase the site and retain their eligibility for participation in
27 the voluntary cleanup program established by this subchapter.

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29 SECTION 2. Arkansas Code § 8-7-1102(a), providing definitions
30 concerning voluntary clean up of hazardous waste sites, is amended to read as
31 follows:

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

33 (1) "Abandoned site" means a site on which industrial,
34 commercial, or agricultural activity occurred and for which no responsible
35 person can reasonably be pursued for a remedial response to clean up the site
36 or residential property, or when the Arkansas Department of Environmental

1 Quality determines it is in the best interest of the citizens of Arkansas to
2 promote redevelopment under this subchapter while continuing to pursue the
3 responsible party or parties;

4 (2) "Implementing agreement" means a plan, order, memorandum of
5 agreement, or other enforceable document issued by the department under
6 provisions of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201
7 et seq., the Remedial Action Trust Fund Act, § 8-7-501 et seq., or this
8 subchapter, to implement the voluntary cleanup process described in § 8-7-
9 1104;

10 (3) "Industrial, commercial, or agricultural activity" means
11 commercial, manufacturing, agricultural, or any other activity done to
12 further either the development, manufacturing, or distribution of goods and
13 services, as well as soil cultivation and crop or livestock production,
14 including, but not limited to, research and development, warehousing,
15 shipping, transport, remanufacturing, repair, and maintenance of commercial
16 machinery and equipment;

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

18 (A) A facility as defined in the Comprehensive
19 Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §
20 9601(9); and

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

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

25 (6) "Residential property" means any real property used as a
26 dwelling or property with four (4) or fewer dwelling units used exclusively
27 for residential use; and

28 ~~(6)(A)(7)(A)~~ "Site assessment" means the site assessment to
29 establish the baseline level of existing contamination on a site.

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

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

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1 SECTION 3. Arkansas Code § 8-7-1103 is amended to read as follows:
2 8-7-1103. Department's authority.

3 (a) The Arkansas Department of Environmental Quality shall have
4 authority regarding a voluntary response program to provide the following:

5 (1) Opportunities for technical assistance for voluntary
6 response actions;

7 (2) Adequate opportunities for public participation, including
8 prior notice and opportunity for comment in appropriate circumstances, in
9 selecting response actions;

10 (3) Streamlined procedures to ensure expeditious voluntary
11 response actions;

12 (4) Oversight and enforcement authorities or other mechanisms
13 that are adequate to ensure that:

14 (A) Voluntary response actions will protect human health
15 and the environment and be conducted in accordance with applicable federal
16 and state laws; and

17 (B) If the person conducting the voluntary response action
18 fails to complete the necessary response activities, including operation and
19 maintenance or long-term monitoring activities, the necessary response
20 activities are completed;

21 (5) Mechanisms for approval of a voluntary response action plan;
22 and

23 (6)(A) A requirement for certification or similar documentation
24 from the ~~state~~ department to the person conducting the voluntary response
25 action indicating that the response is complete.

26 (B) This certification shall document any conditions,
27 restrictions, or limitations on the release from liability for contamination
28 existing at the site before the department and the prospective purchaser
29 enter into an implementing agreement.

30 (b) The department may establish and administer a revolving loan fund
31 to make secured and unsecured loans or grants to eligible participants for
32 the purpose of financing the assessment, investigation, or remedial actions
33 at abandoned industrial, commercial, or agricultural sites, or abandoned
34 residential property.

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36 SECTION 4. Arkansas Code § 8-7-1104(a), concerning the voluntary

1 cleanup process, is amended to read as follows:

2 (a) This section applies:

3 (1) To a person who:

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

6 (B) Is a prospective purchaser of abandoned residential
7 property;

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

12 ~~(C)(D)~~ (D) Will reuse or redevelop the property for
13 industrial, commercial, ~~or agricultural activities~~ agricultural, or
14 residential uses which will sustain or create employment opportunities or
15 otherwise augment the local or state economy and tax base, or both; or

16 (2) To a person who:

17 (A) Is not a responsible party pursuant to § 8-7-
18 512(a)(2)-(4);

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

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

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