

A.C.A. Tit. 8, Ch. 7, Subch. 11 Note

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Arkansas Code Annotated PAW - ET Table of Contents Title 8 Environmental Law Chapter 7 Hazardous Substances Subchapter 11 — Voluntary Cleanup

Tit. 8, Ch. 7, Subch. 11 Note

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A.C.A. § 8-7-1101

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Arkansas Code Annotated PAW - ET Table of Contents Title 8 Environmental Law Chapter 7 Hazardous Substances Subchapter 11 — Voluntary Cleanup

8-7-1101. Declaration of policy.

The General Assembly finds and declares as follows:

- (1) The redevelopment of abandoned industrial, commercial, or agricultural sites or abandoned residential property should be encouraged as a sound land use management policy to prevent the needless development of prime farmland, open spaces, and natural and recreation areas and to prevent urban sprawl;
- (2) The redevelopment of abandoned sites should be encouraged so that these abandoned sites can be returned to useful, tax-producing properties to protect existing jobs and provide new job opportunities;
- (3) Persons interested in redeveloping abandoned sites should have a method of determining what their legal liabilities and cleanup responsibilities will be as they plan the reuse of abandoned sites;
- (4) Incentives should be put in place to encourage prospective purchasers to voluntarily develop and implement cleanup plans of abandoned sites without the need for adversarial enforcement actions by the Division of Environmental Quality;
- (5) The division now routinely determines, through its permitting policies, when contamination will and will not pose unacceptable risks to public health or the environment, and similar concepts are used in establishing cleanup policies for abandoned sites;
- (6) Parties and persons responsible under the law for pollution at abandoned sites should perform remedial responses which are fully consistent with existing requirements;
- (7) As an incentive to promote the redevelopment of abandoned industrial sites, persons not responsible for preexisting pollution at or contamination on abandoned industrial sites should meet alternative cleanup requirements if they acquire title after the nature of conditions at the abandoned industrial site has been disclosed and declare and commit to a specified future land use of the subject abandoned industrial site; and
- (8)
 - (A) Property transactions at times necessitate title acquisition prior to completion of the actions contemplated at § 8-7-1104(b)-(d) by persons not previously involved with the abandoned site or otherwise considered responsible parties for environmental conditions at an abandoned site.
 - (B) These persons should not be foreclosed from participation under the procedures enacted under this subchapter.
 - (C) Therefore, these persons, at the discretion of the Director of the Division of Environmental Quality, may submit a letter of intent that will set forth the persons' desire to purchase the abandoned site and retain their eligibility for participation in the voluntary cleanup program established by this subchapter.

Acts 1997, No. 1042, § 1; 1999, No. 1164, § 108; 2001, No. 164, § 1; 2005, No. 1164, § 1; 2019, No. 910, § 2827.

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A.C.A. § 8-7-1102

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Arkansas Code Annotated PAW - ET Table of Contents Title 8 Environmental Law Chapter 7 Hazardous Substances Subchapter 11 — Voluntary Cleanup

8-7-1102. Definitions.

- (a) As used in this subchapter:
- (1) "Abandoned site" means a site on which industrial, commercial, or agricultural activity occurred and for which no responsible person can reasonably be pursued for a remedial response to clean up the site or residential property or when the Division of Environmental Quality determines it is in the best interest of the citizens of Arkansas to promote redevelopment under this subchapter while continuing to pursue the responsible party or parties;
- (2) "Implementing agreement" means a plan, order, memorandum of agreement, or other enforceable document issued by the division under provisions of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., the Remedial Action Trust Fund Act, § 8-7-501 et seq., or this subchapter, to implement the voluntary cleanup process described in § 8-7-1104;
- (3) "Industrial, commercial, or agricultural activity" means commercial, manufacturing, agricultural, or any other activity done to further the development, manufacturing, or distribution of goods and services, as well as soil cultivation and crop or livestock production, including, but not limited to, research and development, warehousing, shipping, transport, remanufacturing, repair, and maintenance of commercial machinery and equipment;
- (4) "Property" means property and improvements, including:
- (A) A facility as defined in 42 U.S.C. § 9601; and
- (B) A site as defined in § 8-7-203;
- (5) "Prospective purchaser" means a person who expresses a willingness to acquire an abandoned site and is not responsible for any preexisting pollution at or contamination on the abandoned site;
- (6) "Residential property" means any real property used as a dwelling or property with four (4) or fewer dwelling units used exclusively for residential use; and
- (7)
- (A) "Site assessment" means the site assessment to establish the baseline level of existing contamination on a site.
- (B) At a minimum, the assessment shall identify the location and extent of contamination, the quantity or level of contamination, the type of contamination, the probable source of contamination, and the risk or threat associated with the contamination as described in § 8-7-1104.
- (C) The assessment also shall include a description of the intended land use of the site.
- (b) Any other terms of this subchapter not expressly defined shall have the same definitions as provided in § 8-7-203, § 8-7-304, or § 8-7-503, unless manifestly inconsistent with the provisions and remedial intent of this subchapter.

Acts 1997, No. 1042, § 1; 2001, No. 164, § 2; 2005, No. 1164, § 2; 2019, No. 693, § 30; 2019, No. 910, §§ 2828, 2829.

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Arkansas Code Annotated PAW - ET Table of Contents Title 8 Environmental Law Chapter 7 Hazardous Substances Subchapter 11 — Voluntary Cleanup

8-7-1103. Division's authority.

- (a) The Division of Environmental Quality shall have authority regarding a voluntary response program to provide the following:
- (1) Opportunities for technical assistance for voluntary response actions;
 - (2) Adequate opportunities for public participation, including prior notice and opportunity for comment in appropriate circumstances, in selecting response actions;
 - (3) Streamlined procedures to ensure expeditious voluntary response actions;
 - (4) Oversight and enforcement authorities or other mechanisms that are adequate to ensure that:
 - (A) Voluntary response actions will protect human health and the environment and be conducted in accordance with applicable federal and state laws; and
 - (B) If the person conducting the voluntary response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed;
 - (5) Mechanisms for approval of a voluntary response action plan; and
 - (6)
 - (A) A requirement for certification or similar documentation from the division to the person conducting the voluntary response action indicating that the response is complete.
 - (B) This certification shall document any conditions, restrictions, or limitations on the release from liability for contamination existing at the site before the division and the prospective purchaser enter into an implementing agreement.
 - (b) The division may establish and administer a revolving loan fund to make secured and unsecured loans or grants to eligible participants for the purpose of financing the assessment, investigation, or remedial actions at abandoned industrial, commercial, or agricultural sites, or at abandoned residential property.

History

Acts 1997, No. 1042, § 1; 2003, No. 1193, § 1; 2005, No. 1164, § 3; 2019, No. 910, §§ 2830-2832.

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A.C.A. § 8-7-1104

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Arkansas Code Annotated PAW - ET Table of Contents Title 8 Environmental Law Chapter 7 Hazardous Substances Subchapter 11 — Voluntary Cleanup

8-7-1104. Voluntary cleanup process.

- (a) This section applies:
- (1) To a person who:
- (A) Is a prospective purchaser of an abandoned industrial, commercial, or agricultural property with known or suspected contamination;
- (B) Is a prospective purchaser of abandoned residential property;
- (C) Did not by act or omission cause or contribute to any release or threatened release of a hazardous substance on or from the identified abandoned site or is otherwise considered to be a responsible party pursuant to § 8-7-512(a)(2)-(4); and
- (D) Will reuse or redevelop the property for industrial, commercial, agricultural, or residential uses which will sustain or create employment opportunities or otherwise augment the local or state economy and tax base, or both; or
- (2) To a person who:
- (A) Is not a responsible party pursuant to § 8-7-512(a)(2)-(4);
- (B) Submits a letter of intent to participate; and
- (C) Subsequently acquires title to an abandoned site prior to completion of an implementing agreement as set forth in subsection (d) of this section.
- (b) A comprehensive site assessment shall be completed to establish the baseline of existing contamination on the site.
- (c) Following completion of a comprehensive site assessment, the Division of Environmental Quality shall determine whether the site assessment adequately identifies the environmental risks posed by the abandoned site.
- (d)
- (1) The division and the prospective purchaser shall enter into an implementing agreement based on the results of the comprehensive site assessment.
- (2) The implementing agreement shall establish cleanup liabilities and obligations for the abandoned site.
- (3) The prospective purchaser shall provide notice of the implementing agreement in a newspaper of general circulation that serves the area in which the abandoned site is located.
- (4) The notice shall be subject to the approval of the division.
- (5) The implementing agreement shall establish the intended use of the property.
- (6) The description of the intended use shall identify the abandoned site and the nature of the activity that the prospective purchaser proposes for the abandoned site.
- (e) Once the prospective purchaser has acquired legal title to the abandoned site, the purchaser will be responsible to:
- (1)
- (A) Remediate, remove and properly dispose of, or manage, consistent with applicable requirements, any containerized hazardous substances existing on site at the time of purchase, including drummed waste, lagoons, and impoundments and wastes in aboveground and underground tanks, which may pose a threat of release.

(B) Wastes that are disposed or managed on site will remain subject to applicable requirements;

(2) Take all necessary steps as appropriate to prevent migration of hazardous substances beyond the property boundary, considering the factors specified at subsection (h) of this section; and

(3) Remedy any releases of hazardous substances as identified in the comprehensive site assessment required by subsection (b) of this section.

(f) For purposes of subdivision (e)(3) of this section, releases of hazardous substances are those conditions which pose either:

(1)

(A) An unacceptable risk, either acute or chronic, to the health of employees or any other person likely to be exposed to the release from the abandoned site, based upon the intended site use described by the prospective purchaser in the comprehensive site assessment and described by the implementing agreement.

(B) A purchaser may not actually use the property in a manner which differs from the intended use identified in the implementing agreement contemplated by subsection (d) of this section, unless the division and purchaser agree to a modification of the implementing agreement; or

(2) An unacceptable risk to degrade either groundwaters or surface waters, or any risk to degrade the extraordinary resource waters of the State of Arkansas.

(g) A remedial action pursuant to subdivision (e)(3) of this section shall eliminate unacceptable risks and prevent degradation of groundwaters and surface waters which would cause the unacceptable risk or degradation, or both, described in subdivision (f)(2) of this section.

(h)

(1) The selection of remedial action shall be approved by the division after reasonable notice and after opportunity for hearing and shall become an amendment to the implementing agreement entered into pursuant to subsection (d) of this section.

(2) Selection of a remedial action shall include consideration of the following factors:

(A) The intended and allowable use of the abandoned site;

(B) The ability of the contaminants to move in a form and manner which would result in exposure to humans and the surrounding environment at levels considered to be an unacceptable health risk as described in subdivisions (f)(1) and (2) of this section;

(C) Consideration of the potential environmental risks of proposed alternative remedial action and its technical feasibility, reliability, and cost effectiveness;

(D) When an imminent and substantial endangerment is posed; and

(E) Whether institutional or engineering controls eliminate or partially eliminate the imminent and substantial endangerment or otherwise contain or prevent migration.

(3) Remedial actions pursuant to subdivision (e)(3) of this section are not required to provide for the removal or remediation of the conditions or contaminants causing a release or threatened release on the abandoned site if:

(A) Contaminants pose no unacceptable risk as described in subdivisions (f)(1) and (2) of this section, or if the remedial actions proposed in the site assessment and intended uses of the abandoned site will eliminate unacceptable risks as described in subdivisions (f)(1) and (2) of this section; or

(B) Activities required to allow the intended reuse or redevelopment of the abandoned site are in a manner which will protect public health and the environment as described in subdivisions (f)(1) and (2) of this section.

(i) Nothing in this section shall relieve the prospective purchaser, after acquisition of legal title to the abandoned site, of any liability for contamination later caused by the purchaser.

(j) A prospective purchaser of an abandoned site under this subchapter shall not be responsible for paying any fines or penalties levied against any person responsible for contamination on the abandoned site prior to the implementing agreement with the division.

(k)

(1) Once the prospective purchaser has acquired legal title to the abandoned site, the purchaser shall take all the steps necessary to prevent aggravating or contributing to the contamination of the air, land, or water, including downward migration of contamination from any existing contamination on the abandoned site.

(2) The purchaser shall not use or redevelop the abandoned site in any way which is likely to interfere with subsequent remedial actions or in a manner that differs from the intended use established in the implementing agreement described in subsection (d) of this section.

(l) A restriction shall be placed on the deed for the property covered by this subchapter, which restricts the use of the property to activities and compatible uses that will protect the integrity of any remedial action measures implemented on the property.

(m) Upon written notice to the division, the implementing agreement, including all rights and cleanup liabilities entered into by the division and the prospective purchaser under subsection (d) of this section, is transferable in its entirety to all subsequent owners of the property who did not, by act or omission, cause or contribute to any release or threatened release of hazardous substances on the abandoned site.

(n) Subsequent owners shall receive a copy of the implementing agreement from the prospective purchaser and shall not use the abandoned site in a manner which is inconsistent with the intended use described in the implementing agreement authorized by subsection (d) of this section.

(o)

(1) Within thirty (30) days of the date that the prospective purchaser acquires legal title to the abandoned site, the purchaser shall file a notice of the implementing agreement with the clerk of the circuit court in the county in which the abandoned site is located.

(2) Notice of any subsequent amendments to the implementing agreement shall also be filed with the clerk of the circuit court within thirty (30) days after their effective dates.

(3) The clerk of the circuit court shall docket and record the notice so that it appears in the purchaser's chain of title.

History

Acts 1997, No. 1042, § 1; 2001, No. 164, § 3; 2005, No. 1164, § 4; 2019, No. 910, §§ 2833-2838.

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