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94th Arkansas General Assembly/Petroleum Storage Tank Trust Fund: Senate/House of Representatives Enact Legislation Increasing Corrective Action Reimbursement Limit

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The Arkansas State Senate and House of Representatives have passed legislation (HB1520) which would raise the limit for payment for corrective action per occurrence pursuant to the Arkansas Petroleum Storage Tank Trust Fund ("Trust Fund").

HB 1520 raises the limit for payment for corrective action per occurrence (for petroleum underground storage tank ["UST"] releases) from \$1.5 million to \$2.0 million.

In the mid-1980's the United States Congress concluded that a significant percentage of the USTs had or would suffer leaks or spills (often called "releases"). Congress also decided that some releases had or would cause significant subsurface and/or groundwater contamination. A related concern was the possibility that releases in certain areas or settings might infiltrate structures or drinking water supplies.

The Congressional response was legislation mandating that the United States Environmental Protection Agency ("EPA") to develop a UST regulatory program adding Subtitle I to the Resource Conservation and Recovery Act.

Subtitle I required that EPA promulgate UST regulations mandating that petroleum USTs meet various registration, installation, design, leak detection, recordkeeping, and enclosure requirements. Such regulations were finalized in 1989.

Congress also required that EPA mandate that UST owners and operators meet certain financial responsibility requirements. These provisions required that a UST owner or operator obtain \$1 million of financial assurance for both corrective action and compensating third party bodily injury and/or property damage claims related to petroleum releases.

The State of Arkansas was one of the first states to receive delegation of the federal UST program.

Concerns regarding the ability of Arkansas UST owners and operators to comply with the federal financial responsibility requirements prompted the Arkansas General Assembly to create the Trust Fund. See Ark. Code Ann. § 8-7-901, et seq. There was a particular concern in Arkansas because many of the state's UST

owners and operators were (and still are) small businesses. As a rural state, the loss of retail motor fuel businesses in some towns could lead to inadequate supply availability in some areas. Therefore, the Arkansas General Assembly in the late 1980's enacted the UST Trust Fund.

The Trust Fund has enabled UST owners and operators to partially or completely comply with the federal responsibility requirements and to have the resources to address UST releases. Further, the Trust Fund, along with other federal funds and/or grants, have enabled the Arkansas Department of Energy and Environment Division of Environmental Quality to address UST releases for which an owner or operator is either unable or unwilling to remediate a release.

The Arkansas Oil Marketers Association advocated for HB1520 noting that, because of inflation and other factors, a \$1.5 million limit was likely to be exceeded in the future by a number of petroleum UST release sites. The Association cited the fact that the rate of inflation had increased 61.30% since the previous corrective action cap was set in 2003. Therefore, the existing Trust Fund corrective action cap was deemed to:

- No longer be actuarially sound for addressing future cleanups
- Possibly fail to prevent small business UST owners from having to obtain unaffordable insurance
- Lead to fewer UST owner or operator managed cleanups which tend to be somewhat more efficient in addressing petroleum releases

The bill was sponsored and shepherded through the Senate and House of Representatives by Senator Justin Boyd of Fort Smith and Representative Jack Ladyman, respectively.

A copy of HB1520 can be downloaded [here](#).