

95th Arkansas General Assembly House Bill Proposing Amendments to Petroleum Storage Tank Trust Fund



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House Bill 1277 has been filed which proposes two revisions to the Arkansas Petroleum Storage Tank Trust Fund.

The Bill is sponsored by Representative Zack Gramlich of Fort Smith and Senator Justin Boyd of Fort Smith.

The Arkansas Petroleum Storage Tank Trust Fund (“Trust Fund”) is a state statutory mechanism that has been used by both underground storage tank (USTs) and above-ground storage tank owners and operators for over 40 years to address petroleum leaks and spills (i.e., releases). See Ark. Code § 8-7-901 et. seq.

The Trust Fund was a response to United States Congress’ requirement in the late 1980’s that the United States Environmental Protection Agency (“EPA”) promulgate regulations requiring that USTs meet various registration, installation, design, leak detection, recordkeeping, and closure requirements. Of particular relevance, EPA also promulgated regulations requiring that UST owners and operators meet certain financial assurance requirements.

The purpose of the financial assurance regulations was to ensure that funds would be available for corrective action for petroleum releases and compensation for third-party property damage and bodily injury claims. The UST owner/operators were required to provide some type of financial instrument, guarantee, financial worth test, or access to a state trust fund to provide the required financial assurance for corrective action and third-party claims.

Most states (including Arkansas) decided to play a role in the regulation of USTs after the promulgation of federal regulations. Further, the Arkansas General Assembly established the Trust Fund as a mechanism to enable UST owners and operators to meet certain eligibility requirements to enable UST owners and operators to meet their federal financial assurance requirements. There was significant concern whether small owners and operators of facilities with USTs would be able to comply with the strict federal requirements without access to a Trust Fund. In other words, many owners and operators of USTs would probably not have been able to meet the federal requirements of financial responsibility and would therefore close.

The Trust Fund is administered by the Arkansas Department of Energy and Environment – Division of Environmental Quality (“DEQ”).

House Bill 1277 proposed two amendments to the Trust Fund.

First, it would address the Trust Fund reimbursement mechanism for corrective action and third-party claims for compensatory damages. The current statute only allows the owners or operators of a UST or above-ground storage tank to be reimbursed by the Trust Fund once the funds have been expended. In the case of corrective action, the owner or operator pays the consultant or contractor and then obtains reimbursement from DEQ. The Bill provides an alternative that allows the third-party consultant to be reimbursed upon completion of the activity.

This provides the parties the ability to enter into a reimbursement scenario which is most suitable for that particular activity.

Second, the Bill provides that instead of denying eligibility for any reimbursement whatsoever in the event that there is a delay in the reporting of a release, that instead the amount of the deductible incurred by the owner/operator can potentially be increased. The statute currently provides that if there is a delay in the reporting of the release, eligibility for reimbursement can be denied. Therefore, a potential \$200,000.00 corrective action reimbursement would potentially be forfeited.

Instead, the Bill would provide the Arkansas Pollution Control and Ecology Commission, along with input by the Advisory Committee on Petroleum Storage Tanks the ability to provide increased deductibles (above the \$7,500.00 minimum) depending on the rule that was violated. The deductible could be increased up to \$30,000.00 under the Bill.

Eligibility for reimbursement would still require that the USTs or above-ground storage tanks be registered, fees paid, and DEQ is provided required cooperation.

A copy of HB 1277 can be downloaded [here](#).