

93rd Arkansas General Assembly: Petroleum Storage Tank Trust Fund Balance Revision



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The 93rd Arkansas General Assembly convened for regular session on January 11th.

House Bill 1519 ("HB1519") was introduced on February 22nd which would amend the Arkansas Petroleum Storage Tank Trust Fund Act ("Trust Fund").

HB1519 was introduced by Representative Eaves.

Thousands of underground storage tanks ("USTs") are utilized at facilities across the state to store petroleum products. These businesses and governmental agencies include convenience stores, service stations, grocery stores, bus terminals, fire and police stations, airports, utilities, construction companies and car dealerships.

Subtitle I was added to the Resource Conservation and Recovery Act in 1984 to require that the United States Environmental Protection Agency ("EPA") develop UST design and installation, leak prevention, detection, and corrective action provisions. Particularly relevant to the Arkansas Trust Fund were 1986 amendments which added a requirement for UST owners and operators to meet financial responsibility requirements to address potential third party claims and ensure funds were available to remediate releases.

Concerns regarding the ability of UST owners and operators to comply with the federal EPA financial responsibility requirements prompted many states (including Arkansas) to create petroleum UST trust funds. 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.

The principal purpose of the Arkansas Trust Fund has been to enable UST owners and operators to partially or completely comply with the RCRA financial responsibility requirements. Without the Trust Fund, they would have to utilize certain EPA alternative requirements such as insurance, letter of credit or net worth standards. These are either unavailable or unaffordable for many UST owners or operators.

The Trust Fund was enacted during the 77th Arkansas General Assembly in 1989 to address this concern. It arguably ensures that many Arkansas rural and small business tank owners have the financial ability to meet the EPA financial assurance requirements. It further ensured that a means is available to protect human health and the environment by cleaning up tank leaks.

The Trust Fund is financed by an annual registration fee paid by tank owners and operators and a 0.3 per gallon petroleum environmental insurance fee. The fee is remitted by a motor fuel distributor supplier.

When the balance of the Trust Fund reaches \$15 million, the Arkansas Pollution Control and Ecology has an obligation to consider a reduction in the environmental insurance fee. Because the cap was set using 1989 dollars, there is a significant concern that the Trust Fund will be inadequately funded at some point in the future.

HB1519 would adjust the trigger for considering reduction of the environmental insurance fee from \$15 million to \$30 million. The legislation would amend Arkansas Code § 8-7-906(g)(2)(A) by substituting \$30 million for \$15 million. It would not increase either the tank registration fees or the petroleum environmental insurance fees.

An objective of the legislation is to ensure an adequate monetary balance is in place. In the event of an inadequate balance, there is a risk that EPA could determine that the Trust Fund can no longer serve as a mechanism to meet the financial assurance requirements. This would potentially force thousands of Arkansas UST owners or operators to close or cease utilization of tanks that are an integral part of their businesses.

The legislation has been referred to the House Committee on Public Health, Welfare and Labor.

A copy of HB1519 can be downloaded [here](#).