

Supplemental Exhibit C1 – Rep. Zack Gramlich

Item A7

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MEMORANDUM

TO: Steve Goode

FROM: Walter Wright

DATE: July 11, 2025

RE: Act 706 – Arkansas Department of Energy and Environment – Division of Environmental Quality (“DEQ”) to address the Trust Fund deductible amounts.

Act 706 from the 2025 Arkansas General Assembly Regular Session provides in part:

...(d)(1)(A) The amount of the deductible incurred by the owner or operator before the owner or operator is eligible to receive payment for corrective action shall be established by rule by the division with advice and input of the Advisory Committee on Petroleum Storage Tanks.

We have discussed whether this provision is in conflict with (a)(1)(A) which provides that:

...the deductible set by the rule of the Arkansas Pollution Control and Ecology Commission.

I believe the intent of (d)(1)(A) is that DEQ with input from the Advisory Committee can discuss and subsequently petition the Arkansas Pollution Control and Ecology Commission (“Commission”) in terms of a recommendation regarding the appropriate amounts of deductibles.

The Commission of course has the ultimate authority pursuant to Ark. Code Ann. § 8-1-203(b)(1)(A) and Ark. Code Ann. § 8-7-903(b)(2) to promulgate a rule. Nevertheless, it has been standard practice that a key function of DEQ is to gather the appropriate information and submit a petition to the Commission proposing rules or amendments to rules. Ark. Code Ann. § 8-1-202 notes that the DEQ Director’s duties include:

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- (A)(i) the administration of permitting, licensing, certification, and grant programs deemed necessary to protect the environmental integrity of the state.
- (D) day-to-day administration of all activities that the department is empowered by law to perform, including, but not limited to, employment and supervision of such technical, legal, administrative staff, within approved appropriations, as is necessary to carry out the responsibilities vested with the department.

More specifically, DEQ is provided authority in the section of the Arkansas Code dealing with regulated storage tanks to:

- Ark. Code Ann. § 8-7-802(b)(1) To administer and enforce all laws, rules, and regulations related to an underground storage tank release detection, prevention and corrective action program, and financial responsibility, including the use of any and all appropriate legal remedies, to recover cost and collect penalties under the subchapter (emphasis added).

The Advisory Committee is and has been tasked in Ark. Code Ann. § 8-7-904 to:

...advise the department and the Arkansas Pollution Control Commission regarding promulgation of rules and regulations concerning storage tanks.

Neither DEQ nor the Advisory Committee can promulgate a rule. Nevertheless, I believe the relevant previously referenced language in Act 706 can be read to mean that it is the Arkansas General Assembly's intent that both DEQ and the Advisory Committee should work together in proposing deductible amounts to the Commission. As a practical matter this makes sense since the Commission, as opposed to DEQ, has two employees (i.e., Administrative Law Judge and the Commission Secretary).

I would be happy to discuss at any point.

WGW:ae