

CHAPTER 306
FORMERLY
SENATE BILL NO. 233

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO THE JEFFREY DAVIS ABOVEGROUND STORAGE TANK ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 74A, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§7402A Definitions.

(9) “Imminent threat of a release” means the potential for a release which requires action to prevent or mitigate damage to the environment or endangerment to public health or welfare which may result from such a release.

(10) “Indicated Release” means there are signs that an aboveground storage tank, or the secondary containment system are failing or could potentially fail to contain a regulated substance. Indicated Releases are releases that are not observable and are not directly attributable to another source.

(11) ~~(9)~~ “In-service tank” means an aboveground storage tank that:

c. Is emptied solely for the purpose of cleaning, routine maintenance or a change in product, for a time period not to exceed ~~45~~ 180 days.

(16) ~~(14)~~ “Out-of-service” tank means a tank an aboveground storage tank that is:

a. Designated as an out-of-service tank by the owner or operator; ~~and the owner or operator shall provide notification to the Department on a Department registration form; or~~

b. An empty tank ~~except as otherwise described in subparagraph (11) (c.) of this section.~~

~~Not in use, in that it has not had, within any 45 day period, a regulated substance transferred into or withdrawn from it and has been drained of all contents and is empty.~~

§ 7406A Release of substances prohibited; correction of substance release; Department intervention.

(d) The Department may take measures for the prompt control, containment and removal of a released, regulated substance when it determines that the owner or operator is not responding promptly or appropriately. However, all liability for costs incurred by the Department, including, but not limited to, remediation costs, equipment costs, supply costs, legal costs and administrative oversight costs, remain with the owner and operator. Owners and operators shall reimburse all such costs to the Department within ~~30~~ 90 days of receiving written notice of any amount due.

(e) Consistent with the provisions of Chapter 60 of this title, the Department may take measures for the prompt control, containment and removal, or to otherwise address an indicated release or an imminent threat of a release of a regulated substance from an aboveground storage tank when it determines that the owner or operator is not responding promptly or appropriately in accordance with the regulations promulgated pursuant to this chapter. However, all liability incurred by the Department for remediation costs, equipment costs, supply costs, legal costs and administrative oversight costs, remain with the owner and operator. Owners and operators shall reimburse all such costs to the Department within 90 days of receiving written notice of any amount due.

(f) The Department may file an action in Superior Court against any responsible party for cost recovery and for reimbursement of funds expended, for corrective action, in control, containment, removal and remediation of any release, indicated release or imminent threat situation, and all activities associated with preventing releases from aboveground storage tanks. Any cost recovery and reimbursement collected by the Department for these activities shall be credited to and expended by the Department for control of aboveground storage tank releases and in support of the purposes of this chapter. A responsible party shall have an affirmative defense to a cost recovery action under this section by showing that the responsible party was responding promptly and effectively with respect to the control, containment, and removal of released regulated substances at the time that the Department assumed control of the release, indication of a release, or imminent threat situation.

§ 7418A Use of Hazardous Substance Cleanup Act Funds.

The Department may use funding from the Hazardous Substance Cleanup Fund, as established by § 9113 of this title, to support the implementation of this chapter, including but not limited to any of the following purposes:

- (1) Preventing releases from aboveground storage tanks;
- (2) Rendering an aboveground tank empty if an indication of a release is found, or if the aboveground storage tank has been out-of-service for over 18 months;
- (3) Performing an out-of-service site assessment if the owner or operator fail(s) to do so;
- (4) Providing financial assistance to remove aboveground storage tanks that are less than 1100 gallons that contain heating fuel and investigate releases from these tanks and conduct corrective actions as necessary;
or
- (5) Investigating the nature and extent of a release from any type of aboveground storage tank, and performing necessary corrective actions to minimize degradation of groundwater and to protect human health and the environment.

Approved July 13, 2016