

CHAPTER 440
FORMERLY
HOUSE BILL NO. 367
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO UNDERGROUND STORAGE TANKS.

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

Section 1. Amend §7401, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

The General Assembly finds and declares that the storage of petroleum products and other hazardous liquids in underground storage tanks is emerging as a major cause of groundwater contamination in the State; that the State's groundwater resources are vital to the population and economy of the State; that millions of gallons of gasoline and other hazardous substances are stored in underground storage tanks; that leaks of stored substances are occurring in a significant number of these tanks due to corrosion, structural defect and improper installation; that leaks are often difficult to detect early because of insufficient product inventory or other control systems; ~~and~~ that it is necessary to provide for more stringent control of the installation, operation, retrofitting and abandonment of underground storage tanks to prevent leaks, and where leaks should occur, detect them at the earliest possible stage and thus minimize further degradation of groundwater; and that responsible parties should be required and encouraged to remediate, take corrective action, and clean up released regulated substances, and contaminated soils and groundwater, on or about the facilities with which they are associated; and that the costs of such remediation and clean up should be fairly apportioned if more than one responsible party is liable.

Section 2. Amend §7402, 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:

§ 7402 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Abandoned storage system" means a storage system which:

- a. Is not intended to be returned to service;
- b. Has been out of service for over 3 years; or
- c. Has been rendered permanently unfit for use.

(2) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves and pumps, that are used to distribute, meter or control the flow of petroleum or hazardous substances from an underground storage tank.

(3) "Corrective action" means the sequence of actions, or process, that includes confirming a release, site assessment, interim remedial action, remedial action, monitoring, and termination of remedial action.

~~(3)~~(4) "Department" means the Department of Natural Resources and Environmental Control.

~~(4)~~(5) "Existing tank" means a tank for which installation began prior to July 12, 1985.

~~(5)~~(6) "Facility" means any location or part thereof ~~containing~~ that contains or had previously contained 1 or more underground storage tanks.

(7) "Fiduciary" means:

a. A person acting for the benefit of another party as a bona fide:

1. Trustee, executor, administrator, custodian, guardian of estates or guardian ad litem, receiver, conservator, committee of estates of incapacitated persons, or personal representative;

2. Trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

3. Representative in any other capacity that the Administrator, after providing public notice, determines to be similar to the capacities described in paragraphs 1. and 2. above.

b. “Fiduciary” does not mean:

1. A person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person; or

2. A person that acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or of any other person.

(8) “Fiduciary capacity” means the capacity of a person in holding title to a facility, or otherwise having control of or an interest in the facility, pursuant to the exercise of the responsibilities of the person as a fiduciary.

(9) “Foreclosure” or “foreclose” means:

a. Acquiring, and to acquire, a facility through:

1. Purchase at sale under a judgment or decree, power of sale, or non-judicial foreclosure sale;

2. A deed in lieu of foreclosure, or similar conveyance from a trustee; or

3. Repossession,

b. If the facility was security for an extension of credit previously contracted:

1. Conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

2. Any other formal or informal manner by which the person acquires, for subsequent disposition, title to or possession of a facility in order to protect the security interest of the person.

~~(6)~~(10) “Fund” means the Delaware Underground Petroleum Storage Tank Response Fund.

~~(7)~~(11) “Heating fuels” means a type of fuel oil that is 1 of 8 technical grades. These grades are: No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, No. 6 residual and substitutes such as kerosene or diesel when used for heating purposes.

(12) “Lender” means:

a. An insured depository institution (as defined in the Federal Deposit Insurance Act, 12 U.S.C. § 1813(c)(2)) or an insured credit union (as defined in the Federal Credit Union Act, 12 U.S.C. § 1752(7)) authorized by law to do business in this State;

b. A bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. § 2001 *et seq.*, as amended) authorized by law to do business in this State;

c. A leasing or trust company that is an affiliate of an insured depository institution authorized to do business in this State;

d. Any person (including a successor or assignee of any such person) that makes a *bona fide* extension of credit to or takes or acquires a security interest from a nonaffiliated person;

e. Any legal entity authorized, to buy or sell loans or interests in loans in a bona fide manner in this State;

f. A person that insures or guarantees against a default in the repayment of an extension of credit, or acts as a surety with respect to an extension of credit, to a nonaffiliated person; and

g. A person that provides title insurance and that acquires a facility as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

Section 3. Amend §7402, 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:

~~(11)~~(16) “Owner” means

a. In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances; and

b. In the case of any underground storage tank in use before November 8, 1984, but no longer in service on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use.

c. "Owner" does not mean any person who, without participating in the management of an underground storage tank system, and without otherwise being engaged in petroleum production, refining, or marketing, holds indicia of ownership in an underground storage tank system primarily to protect the person's security interest in it or is a fiduciary which has a legal title to or manages any property for purposes of administering an estate or trust of which such property is part. In the case of foreclosure, such person shall not be deemed the owner of the underground storage system if the person:

1. Provides notification to the Department, using a form provided by the Department, within thirty (30) days of the filing of the complaint for foreclosure, for any real property known by the person to contain an underground storage tank, or for any real property which contains a registered underground storage tank. This notification is required for in-service or out-of-service underground storage tanks; and

2. Empties all known and registered underground storage tanks, located on the foreclosed real property, of regulated substances, within sixty (60) days after confirmation of foreclosure. This emptying is not required if an operator undertakes operational responsibility for the foreclosed real property during this sixty (60) day period. An underground storage tank is empty when all regulated substances have been removed using commonly employed practices, so that no more than one inch or 2.5 centimeters of residue, or 0.3 percent by weight of the total capacity of the underground storage tank system, remains in the underground storage tank system.

d. For purposes of this subsection (16):

1. The term "participate in management" means actually participating in the management or operational affairs of an underground storage tank or facility, but does not include merely having the capacity to influence, or the unexercised right to control, an underground storage tank or facility operations.

2. A person that is a lender or fiduciary and that holds indicia of ownership primarily to protect a security interest in an underground storage tank or facility shall be considered to participate in management only if, while the borrower is still in possession of the underground storage tank or facility encumbered by the security interest, the person:

(A) exercises decision-making control over the environmental compliance related to the underground storage tank or facility, such that the person has undertaken responsibility for the hazardous substance handling or disposal practices related to the underground storage tank or facility; or

(B) exercises control at a level comparable to that of a manager of the underground storage tank or facility, such that the person has assumed or manifested responsibility for the overall management of the underground storage tank or facility encompassing day-to-day decision making with respect to environmental compliance, or over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the underground storage tank or facility other than the function of environmental compliance;

3. The term "participate in management" does not include performing an act or failing to act prior to the time at which a security interest is created in an underground storage tank or facility.

4. The term "participate in management" does not include--

(A) holding a security interest or abandoning or releasing a security interest;

(B) including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

(C) monitoring or enforcing the terms and conditions of the extension of credit or security interest;

(D) monitoring or undertaking 1 or more inspections of the underground storage tank or facility;

(E) requiring a corrective action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with the underground storage tank or facility prior to, during, or on the expiration of the term of the extension of credit;

(F) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the underground storage tank or facility;

(G) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

(H) exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

(I) conducting a corrective action, if the actions do not rise to the level of participating in management (within the meaning of paragraph d.1. and d.2.).

5. A person who is a lender that did not otherwise participate in the management of a facility as provided in paragraphs (16)d.3. and (16)d.4. of this section shall not be considered to have participated in management, notwithstanding that the person:

A. Forecloses on the property; and

B. After foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the property, maintains business activities, winds up operations, or undertakes corrective actions of this chapter.

e. A fiduciary as described in this section shall not be liable in its personal capacity under this chapter for:

1. Undertaking or directing another person to undertake any other lawful means of addressing a hazardous substance in connection with the facility;

2. Terminating the fiduciary relationship;

3. Including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying or enforcing the term or condition;

4. Monitoring or undertaking one or more inspections of the facility;

5. Providing financial or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary;

6. Restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship;

7. Administering, as a fiduciary, a facility that was contaminated before the fiduciary relationship began; or

8. Declining to take any of the actions described in subparagraphs 2 through 7.

f. The liability of a fiduciary under any provision of this chapter for the release or threatened release of a regulated substance at, from, or in connection with a facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity; provided, however, that this limitation shall not apply to the extent that a person is liable under this chapter independently of the person's ownership of a facility as a fiduciary or actions taken in a fiduciary capacity.

g. The exclusion from liability contained in paragraph (16)c. does not limit liability pertaining to the release or threatened release of a regulated substance if negligence of a fiduciary causes a release.

h. Nothing contained in paragraph (16)c.:

1. Affects the rights or immunities or other defenses that are available under this chapter or other law that is applicable to a person subject to this paragraph; or

2. Creates any liability for a person or a private right of action against a fiduciary or any other person.

i. Nothing in paragraph (16)c. applies to a person if the person:

1. Acts in a capacity other than that of a fiduciary or in a beneficiary capacity, and in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

2. Is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

j. Paragraph (16)c. does not preclude a claim under this chapter against:

1. The assets of the estate or trust administered by the fiduciary; or

2. Nonemployee agent or independent contractor retained by a fiduciary.

Section 4. Amend §7402, 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:

(24) "Security interest" means an interest in a petroleum UST or UST system or in a facility or property on which a petroleum UST or UST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and assignments, if the transaction creates or establishes an interest in an UST or UST system or in the facility or property on which the UST or UST system is located, for the purpose of securing a loan or other obligation.

Section 5. Amend §7406, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) No person shall knowingly allow a release from an underground storage tank to continue without taking immediate steps to report the release to the Department.

(b) Responsible parties shall take measures for the prompt control, containment, and removal of the released regulated substances to the satisfaction of the Department.

(c) The Department may assume control of any release situation when it is determined that responsible parties are not responding promptly. However, all liability will remain with the responsible party.

(d) Responsible parties are liable for remediation and corrective action pursuant to subsections (b) and (c) of this section, and the regulations promulgated under this chapter. This remedial liability has attached and shall continue to attach at any time prior to January 1, 2016, and survives subsequent to that date.

(e) Responsible parties who own, owned, operate, or operated, a facility or an underground storage tank located at a facility, on or after January 1, 2016, shall be liable for remediation and corrective action, in accordance with this chapter and the regulations promulgated under it, for all released regulated substances on or under the facility, or on or under other real property but which originated or emanated from the facility, regardless of whether any responsible party proximately caused any release or not, and regardless of when and how the regulated substances were released. The ownership or operational association with the facility establishes the nexus for liability under this section to attach to these responsible parties.

(1) A responsible party is not liable under this section for remediation and corrective action of and for regulated substances only if the responsible party can establish that the release of the regulated substances was caused solely by:

a. An act of God;

b. An act of war; or

c. An act or omission of a third party other than:

1. An employee or agent of the responsible party; or

2. Any person whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the responsible party, but not including a contractual relationship in connection with the sale or transfer of the facility by or from the responsible party to a third party.

3. This defense applies only when the responsible party asserting the defense has exercised due care with respect to the facility, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions; notwithstanding the foregoing, where the contractual relationship arises in connection with the sale or transfer of the facility by or from the responsible party to a third party, the defense applies if the responsible party asserting the defense has exercised due care with respect to the facility during the period of ownership or operation of the facility by the responsible party, and with respect to the foreseeable acts or omissions of the third party based on the responsible party's knowledge and information at the time of the sale or transfer of the facility.

(2) A responsible party is not liable under this section for remediation and corrective action of and for regulated substances which were released before the time period when the responsible party owned or operated the facility and/or underground storage tank, only if the responsible party had no knowledge or reason to know, at the commencement of the ownership or operation, of any prior release. This paragraph (e)(2) is limited as follows:

a. To establish that the responsible party had no reason to know of any prior release, the responsible party must demonstrate that on or before the date on which the responsible party acquired or began operations at the facility, the responsible party carried out all appropriate inquiries, as provided in subparagraph (e)(2)b. of this section, into the previous ownership and operation of the facility in accordance with generally accepted good commercial and customary standards and practices.

b. The procedures of the American Society for Testing and Materials (“ASTM”), including the documents known as “Standard E1527-05” and “Standards E1527-13,” entitled “Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process,” or the procedures in 40 C.F.R. § 312.20, shall satisfy the requirements of all appropriate inquiries in subparagraph (e)(2)a. of this section, but the Secretary may, by regulation, update or augment these two alternative methods of satisfying all appropriate inquiries, and may add additional methods of satisfying the requirements of all appropriate inquiries.

c. Notwithstanding paragraph (e)(2) of this section, if the responsible party obtained actual knowledge of any current or prior release or threatened release of regulated substances at the facility when the responsible party owned or operated the facility and then subsequently transferred ownership or operation of the facility to another person without disclosing this knowledge, the responsible party shall be treated as liable under section (e) of this section and no defense under paragraph (e)(2) of this section shall be available to the responsible party.

d. Nothing in this subsection (e) of this section shall affect or diminish the liability under this chapter of a responsible party who, by any act or omission, caused or contributed to the release of regulated substances which is the subject of the action relating to the underground storage tank or facility.

(f) Subsections (g), (h), (i), and (j) of this Section apply to each and every responsible party, regardless of whether the remedial liability arose or attached, before or after January 1, 2016.

(g) The remedial liability of responsible parties is strict liability, joint and several,

(h) The remedial liability of responsible parties includes a right of contribution. In resolving contribution claims, the Superior Court may allocate costs among the responsible parties using such principles of fairness and justice as the Superior Court deems appropriate.

(i) The Department may assume control of any release situation when responsible parties are not responding promptly or effectively for the control, containment, and removal of released regulated substances. Control of any release situation by the Department includes without limitation the entry by the Department upon the facility and any other real property, public or private, on or under which the released regulated substances are present, to install water treatment on contaminated drinking water systems, vent indoor air contaminants, remove and remediate regulated substances and substrate from the subsurface, remove or close in place leaking underground storage tanks, investigate the extent of the release through environmental sampling, undertake corrective action, and take any other such action to control, contain, and remove the released regulated substances. The Department, its contractors and agents, shall not be deemed to be responsible parties based on any actions they may take in assuming control of a release situation.

(j) 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 and remediation of any release situation, and activities associated with underground storage tank removals and closures in place. Any cost recovery and reimbursement collected by the Department shall be credited to and expended by the Department for control of underground storage tank releases and to support 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 for the control, containment, and removal of released regulated substances at the time that the Department assumed control of the release situation.

Section 6. Amend §7408, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) For the purposes of developing or assisting in the development of any regulation or enforcing this chapter, any owner or operator of any underground storage tank, and any owner of a facility, ~~used for storing regulated substances~~ shall, upon the request of any duly designated officer or employee of the State, furnish information relating to such tanks or contents and permit such person at all reasonable times and in accordance with § 6024 of this title, to have access to, and to copy all records relating to such tanks and to conduct such monitoring as such officer or employee deems necessary. For the purposes of developing or assisting in the development of any regulation or enforcing this chapter, such officer or employee ~~or representative~~ is authorized:

(1) To enter at reasonable times an establishment or other place where an underground storage tank is located;

(2) To inspect and obtain samples from any person of such regulated substances and to conduct monitoring of the tanks, systems, contents or surrounding soils. Each such inspection shall be commenced and completed with reasonable promptness.

(b) In submitting data under this chapter, a person required to provide such data may:

(1) Designate the data which such owner or operator believes is entitled to protection under Delaware's Freedom of Information Act ~~this section~~; and

(2) Submit such designated data separately from other data submitted under this chapter.

~~(c) Any such records, reports or information obtained shall be entitled to protection under § 1905 of Title 18 of the United States Code.~~

(c) The Department, its contractors and agents, may enter a facility, at reasonable times, upon giving the owner, operator, or real property owner, verbal notice, to investigate if a release has occurred from an underground storage tank system. This includes but is not limited to performing release detection activities as well as sampling soils and groundwater to evaluate whether a release of a regulated substance has occurred.

(d) The Department, its contractors and agents, may enter a facility, at reasonable times, upon giving the owner, operator, or real property owner, written notice, to remove regulated substances from underground storage tanks that are suspected of leaking, or that have been out of service for longer than twelve months, to perform sampling of soil and groundwater to determine the nature and extent of a confirmed release, to determine the need for corrective action, and to perform corrective action.

(e) The Department is authorized to petition the Superior Court for an order for access to real property, to investigate the possibility of underground migration of released regulated substances, from an underground storage tank or facility, to the real property, to control or contain released regulated substances that may be on the real property, and to undertake corrective action on the real property. The Superior Court shall schedule a hearing on the petition, giving due consideration to the immediacy of the facts presented in the petition. The Department shall give the owners of record of the real property notice of the hearing on the petition at least ten days before the hearing, by hand delivery, by certified U.S. Mail to the real property owner's last known address, or by leaving the notice at the real property. The notice shall be in writing and shall contain a copy of the petition, a description of the real property to be accessed, the actions proposed and expected to be taken by the Department, and the date, time and location of the hearing. For good cause shown, the Superior Court shall grant the petition and order access to the real property in furtherance of the purpose of this chapter and for protection of the environment, for specified actions and goals, and on such terms and conditions, as may be supported by the facts and circumstances presented. This section shall not be construed as impairing in any way the authority of the Department and real property owners from entering into voluntary agreements for access at any time. The liability of responsible parties for costs incurred by the Department includes costs incurred by the Department on real property covered by an order issued under this section.

(f) If the Department determines that an emergency exists that requires immediate action to protect public health, safety, welfare, or the environment, and the owner, operator, or property owner is unwilling, unavailable, or

unable to take such immediate action, the Department is authorized to enter upon a facility and adjacent or related real property and take any immediate action necessary to abate the emergency.

Section 7. Amend §7410, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) The Department shall adopt regulations for maintaining evidence of financial responsibility ~~for taking corrective action~~ by all owners and operators for taking corrective action, ~~in an amount of not less than \$100,000 per occurrence,~~ and for compensating third parties for bodily injury and property damages ~~by all owners and operators in an amount of not less than \$300,000 per occurrence in cases of releases arising from operating an underground storage tank. Financial responsibility may be established in accordance with regulations promulgated by the Department by any 1 or any combination of the following: Insurance, guarantee, surety bond, letter of credit or qualification as a self-insurer in accordance with regulations promulgated by the Insurance Commissioner caused by accidental releases from the operation of underground storage tank systems in the following amounts:~~

(1) an amount of not less than \$1,000,000 per occurrence for taking corrective action and for compensating third parties for bodily injury and property damage for underground storage tank systems located at Petroleum Marketing Facilities or that handle an average of more than 10,000 gallons of regulated substance per month based on an annual throughput for the previous calendar year or that store hazardous substances, or in an amount not less than \$500,000 per occurrence for all other underground storage tank systems; and

(2) an amount of not less than \$1,000,000 annual aggregate for taking corrective action and for compensating third parties for bodily injury and property damage for owners and operators of 1 to 100 underground storage tank systems or an amount of not less than \$2,000,000 annual aggregate for taking corrective action and for compensating third parties for bodily injury and property damage for owners and operators of more than 100 underground storage tank systems.

(b) Financial responsibility may be established in accordance with regulations promulgated by the Department and may include the following: insurance, guarantee, surety bond, irrevocable letter of credit, trust fund, or qualification as a self-insurer. In addition, local governments may establish evidence of financial responsibility by any of the following: local government bond rating test, local government financial test, local government guarantee, or local government fund. The Owner and Operator shall provide written notification to the Department within thirty days of any substantive change in the financial responsibility mechanism, including but not limited to cancellation, non-renewal, substitution of alternate financial responsibility mechanism, or change in financial responsibility provider. Such written notification shall include but not be limited to the names and addresses of the providers involved, the financial responsibility mechanisms involved, and the effective date of change.

~~(b)(c)~~ Any claim arising out of conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the person guaranteeing or providing evidence of financial responsibility. In such a case, the person against whom the claim is made shall be entitled to invoke all rights and defenses which would have been available to the owner or operator had such action been brought directly against the owner or operator.

~~(c)(d)~~ This section shall not limit any other state or federal statutory, contractual or common-law liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This section does not diminish the liability of any person under § 107 or § 111 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 [42 U.S.C. § 9607 or § 9611], or other applicable law.

Section 8. Amend §7411(b), Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(b) If such violator fails to take ~~corrective~~ action to correct the violation within the time specified in the order, he or she shall be liable for a civil penalty of not more than \$25,000 for each day of continued noncompliance and the Secretary may suspend or revoke any permit issued to the violator.

Section 9. Amend §7417, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7417. ~~Rehabilitation participation in reimbursement plan.~~ Use of Hazardous Substance Cleanup Act funding.

~~The General Assembly finds and declares that in order to provide for rehabilitation of as many contaminated sites as possible, as soon as possible, voluntary rehabilitation of contaminated sites should be encouraged; provided that such rehabilitation is conducted in a manner and to a level of completion which will protect the public health, safety and welfare. To accomplish this purpose, any person conducting site rehabilitation under this chapter, either through his or her own personnel or by contract, shall be entitled to reimbursement from the Fund in accordance with regulations promulgated by the Department for the costs defined in § 7409 of this title provided such person notifies the Department of such contamination within 18 months after July 16, 1987, and begins all remediation work within 1 year after notification. Persons already engaged in site rehabilitation as of July 16, 1987, shall be entitled to reimbursements of all expenses incurred on or after July 16, 1987, provided the person is otherwise eligible for participation in accordance with this section, and reimbursement expenses are limited to those defined in § 7409 of this title. Participation in the reimbursement plan is subject to the following conditions:~~

~~(1) The first \$2,500 in costs as described in § 7409(b)(1) (7) of this title are not to be reimbursed by the Fund.~~

~~(2) The facility owner shall not be the federal government or any agency or subdivision thereof.~~

~~(3) Contamination results from normal aging and/or corrosion and is not the result of intentional damage, or im proper handling or installation.~~

~~(4) Contamination results from a release from an underground tank containing petroleum.~~

~~(5) Reimbursement for site rehabilitation either through a person's own personnel or through responsible response action contractors or subcontractors shall not be considered a state contract or subject to state bid requirements.~~

~~(6) Site rehabilitation shall be completed in accordance with criteria established by the Department.~~

~~(7) Nothing in this section shall be construed to authorized any payments for the repair or replacement of any tank or equipment.~~

~~(8) Procedural rules of this section shall have been met.~~

~~(9) The release did not result from any gross negligence, including, but not limited to, the following:~~

~~a. Wilful intent to conceal existence of a serious discharge;~~

~~b. Falsified inventory or reconciliation records;~~

~~c. Intentional damage to a petroleum storage system;~~

~~d. Willful failure to perform the inventory and reconciliation of records required pursuant to regulations promulgated under this chapter;~~

~~e. Failure to meet retrofitting requirements contained in the regulations promulgated pursuant to this chapter;~~

~~f. Willful failure to make monthly monitoring system checks required pursuant to regulations promulgated under this chapter;~~

~~g. Violation of the Department's regulations.~~

The Department may use funding from the Hazardous Substance Cleanup Fund (7 Del. C. § 9113) to support the implementation of this Chapter, including but not limited to preventing releases from underground storage tanks, removing or properly closing in place underground storage tanks that are suspected of leaking or that have been out of service for longer than twelve months, providing financial assistance to remove underground storage tanks containing heating fuel, detecting releases as early as possible, investigating the nature and extent of a release, and performing necessary corrective actions to minimize degradation of groundwater and protect human health and the environment.

Section 10. Amend §7907, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7907 Definitions.

As used in this subchapter:

(5) "Environmental response project" means a plan or work performed for environmental remediation of real property, conducted:

a. Under a federal or state program governing environmental remediation of real property, including Chapter 91 of this title, Delaware Hazardous Substance Cleanup Act (HSCA), Chapter 74 of this title, the Delaware Underground Storage Tank Act, and Chapter 74A of this title, the Jeffrey Davis Aboveground Storage Tank Act;

b. Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of the Department; or

c. Under a state voluntary cleanup program authorized in Chapters 60, 63, 74, 74A and 91 of this title.

Approved October 06, 2014