



SPONSOR: Rep. Heffernan & Sen. Hansen
Reps. Burns, Gray, Hilovsky, K. Johnson, Morrison,
Phillips, Snyder-Hall, Spiegelman, Lambert; Sens.
Mantzavinos, Paradee, Seigfried

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 407
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 7 AND 30 OF THE DELAWARE CODE RELATING TO THE DELAWARE
HAZARDOUS SUBSTANCES CLEANUP ACT AND THE REALTY TRANSFER TAX.

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

Section 1. Amend § 9103, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 9103. Definitions.

As used in this chapter:

(1) “Abate” means to perform a remedial action intended to prevent or mitigate harm or the potential for harm to public health or welfare the environment caused by an emergency.

(10) “Emergency” means a release, or the imminent threat of a release, which requires immediate action to protect human health or welfare or the environment.

(30) “Removal action” means a short term or interim remedial action taken in response to a release or threatened release to prevent, minimize, contain, stabilize, mitigate, or eliminate a threat to public health or welfare or the environment.

Section 2. Amend § 9106, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9106. Investigation and access.

(a) (1) If there is a reasonable basis to believe there was a release or is an imminent threat of release, the Secretary may require information or documents relevant to the release or imminent threat of release from any person who may have information pertinent to:

a. The identification, nature and volume of materials generated, treated, stored, transported to or disposed of at a facility, and the dates thereof;

- b. The extent of a release or imminent threat of release from a facility;
- c. The identity of potentially responsible parties;
- d. The financial ability of a potentially responsible party to perform a remedy.

(2) The Secretary or ~~his or her~~ the Secretary's authorized employees or agents may enter, at reasonable times, upon any real property, public or private, to conduct sampling, inspection, examination, and investigation evaluating the release or imminent threat of release to determine the need for a remedy or to execute the remedy upon given verbal notice, and after presenting official identification to the owner or operator. The Secretary or ~~other authorized person~~ the Secretary's authorized employees or agents gaining access under this section, if requested in advance, shall split a sample with the ~~operator, or person in charge~~ owner or operator of the facility. If any analysis is made of the samples, a copy of the results of the analysis may be furnished to the ~~owner, operator, or person in charge~~ owner or operator of the facility.

(b) If the Secretary determines ~~that~~ there is good cause to believe an emergency exists, the Secretary or the Secretary's authorized employees or agents, without court order, may enter a facility and take any immediate action necessary to abate the emergency notwithstanding the provisions of §9107(e) of this title.

~~(1) An emergency exists that requires immediate action to protect public health or welfare or the environment;~~
and

~~(2) The operator is unwilling or unable to take such immediate action, the Secretary, or his or her authorized employees or agents, without court order, may enter upon a facility and take any immediate action necessary to abate the emergency notwithstanding the provisions of § 9107(e) of this title.~~

Section 3. Amend § 9107, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9107. Remedies.

(b) The settlement agreement providing for a remedy may be in the form of a consent decree, administrative order of consent, memorandum of agreement or any other form of agreement consistent with regulations developed pursuant to § 9104 of this title. When a settlement agreement is entered into in the form of a consent decree pursuant to this chapter, it shall be filed with the Superior ~~Court~~ Court or the Court of Chancery. The Secretary shall allow at least 20 days for public comment before the proposed consent decree is entered. If the Secretary deems it appropriate to effectuate the purposes of this chapter, the Secretary may choose to resolve a person's liability with the State under this section through use of settlement agreements entered into pursuant to CERCLA.

(h) Where the Secretary has good cause to believe that a removal action is necessary to protect human health or welfare, or the environment, the Secretary may authorize a person to perform a removal action notwithstanding the provisions of subsection (e) of this section. A removal action performed under this section must be incorporated into any proposed plan of remedial action by the Department.

Section 4. Amend § 9109, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9109. Enforcement.

(d) The Secretary may bring an action in ~~the Superior Court~~ a court of competent jurisdiction to recover from any potentially responsible party all natural resource damages resulting from a release.

(e) The Secretary may bring an action in ~~the Superior Court~~ a court of competent jurisdiction against any potentially responsible party to collect remedial costs incurred by the Secretary, including those associated with recovering costs such as attorney's fees and employee time, or for a party's refusal to comply, without sufficient cause, with an order issued under subsection (a) or (b) of this section.

(g) The Secretary may bring an action in ~~Superior Court~~ a court of competent jurisdiction to enforce any order issued by the Secretary under subsection (f) of this section. Any person refusing to comply, without sufficient cause, with such an order shall be liable pursuant to paragraph (h)(2) of this section.

Section 5. Amend § 9111, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9111. Fraud.

(a) If a potentially responsible party commits fraud on the Secretary or another potentially responsible party in a proposed settlement agreement or in an application for a certification of completion of remedy, then any limitation on liability otherwise provided herein shall be void, and any injured person, including the Secretary, may recover actual damages sustained as well as a civil penalty of up to ~~\$10,000~~ \$40,000 for each fraudulent act.

Section 6. Amend § 9114, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 9114. Tax assessment.

(a) (1) With regard to gross receipts received after December 31, 1990, and before July 1, 1993, there shall be added to the tax provided in §§ 2902(c)(3) and 2905(b)(1) of Title 30 an additional tax of .6% on all taxable gross receipts determined under §§ 2902 and 2905 of Title 30 derived from the sale of petroleum or petroleum products.

(2) With regard to gross receipts received after June 30, 1993, and before January 1, 2019, the rate of additional tax under this subsection shall be increased to 0.9%.

(3) With regard to gross receipts received after December 31, 2018, and before January 1, ~~2029~~, 2037, the rate of additional tax under this subsection is subject to annual adjustment based upon the total of moneys deposited into the Hazardous Substance Cleanup Fund (Fund") during the lookback period, as that term is defined in § 2122 of Title 30. The Division of Finance shall calculate the annual adjustment under this paragraph (a)(3) in conjunction with the determination of gross receipts tax filing frequencies.

Section 7. This Act shall take effect on July 1, 2026.