



SPONSOR: Sen. McBride

Sens.
Connor
&
Simpson

Reps.
Carey
&
McWilliams

DELAWARE STATE SENATE

144th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1 FOR
SENATE BILL NO. 168
AS AMENDED BY
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO THE TRANSFER OR CLOSURE OF CHEMICAL OR HAZARDOUS SUBSTANCE ESTABLISHMENTS AND TO ESTABLISH A CONTRACTOR CERTIFICATION PROGRAM FOR HAZARDOUS SUBSTANCE CLEANUP SITES.

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

Section 1. Amend Title 7 of the Delaware Code by adding thereto a new Chapter 92 to read as follows:

"CHAPTER 92 – TRANSFER OR CLOSURE OF CHEMICAL OR HAZARDOUS
SUBSTANCE ESTABLISHMENTS

§9201. Definitions.

The following definitions apply to this chapter.

- (1) 'Affiliate' means an entity as defined in the regulations of the Security and Exchange Commission under the Securities and Exchange Act of 1934 and the Securities Act of 1933.
- (2) 'Chemical' means a 'hazardous chemical' as defined in Title 16, Chapter 63 Section 6302(6).
- (3) 'Department' means the Department of Natural Resources and Environmental Control.
- (4) 'Establishment' means any real property, any business operation, or any facility which has been required or is required to report a total of one (1) million pounds or more, based on the combined maximum amounts, of any combination of chemicals listed under the Emergency Planning and Community Right-To-Know Act, 16 Del. C §6306, and/or has been or is a Large Quantity Generator under Delaware's Regulations Governing Hazardous Waste, unless exempted by regulation adopted pursuant to this chapter.

(5) 'Hazardous substance' means the term as defined in Chapter 91 of this title or in the regulations promulgated pursuant thereto.

(6) 'Owner or operator' means:

- a. a Person owning, operating, or otherwise controlling activities at a Chemical or Hazardous substance Establishment or part of an Establishment; or
- b. a Person who owned, operated, or otherwise controlled activities at a Chemical or Hazardous substance Establishment or part of an Establishment.

(7) 'Parcel' means piece or tract of land which contains an Establishment, as defined in subsection (4) of this section, or on which is or was located any continuous business operation which contains or contained an Establishment.

(8) 'Person' means any individual, entity, trust, firm, joint stock company, partnership, consortium, joint venture, commercial entity, corporation (including a government corporation or authority), limited liability company, association, federal government, federal agency, state agency, county, municipality, commission, school district, conservation district, Indian tribe, political subdivision of a state, an interstate body, or any other legal or commercial entity.

(9) 'Secretary' means the Secretary of the Department of Natural Resources and Environmental Control.

(10) 'Transfer of an Establishment' means a transaction or proceeding through which there is a change in ownership of an Establishment. Change in ownership shall include, but not be limited to, the sale or transfer of stock in a corporation or interest in a limited liability company or partnership, or merger or consolidation, resulting in a change in the person or persons holding the controlling interest in the direct owner or operator or indirect owner of the establishment, but does not mean:

- a. the conveyance or extinguishment of an easement;
- b. the conveyance of an Establishment through a foreclosure or the conveyance of a deed in lieu of foreclosure to a lender;
- c. the conveyance of a security interest;
- d. a change in ownership approved by the Register of Wills;
- e. a devolution of title to a surviving joint tenant, or to a trustee, executor, or administrator under the terms of a testamentary trust or will, or by intestate succession;

- f. a corporate reorganization not substantially affecting the control, ownership or operation of the Establishment;
- g. the issuance of stock or other securities of an entity which owns or operates the Establishment;
- h. the conveyance of an interest in an Establishment where the transferor(s) is one or more of the following: the sibling, spouse, child, parent, grandparent, the child of a sibling, or the sibling of a parent, or a spouse of any of the foregoing, of the transferee(s);
- i. the conveyance of an Establishment to a trustee of an inter vivos trust created by the transferor(s) solely for the benefit of one or more of the following: the sibling, spouse, child, parent, grandchild, the child of a sibling, or the sibling of a parent, or a spouse of any of the foregoing, of the transferor(s);
- j. the conversion of a general or limited partnership to a limited liability company;
- k. the transfer of general partnership property held in the names of all of the general partners to another general partnership which includes as general partners immediately after the transfer substantially all of the same Persons that were general partners immediately prior to the transfer;
- l. the transfer of general partnership property held in the names of all of the general partners to a limited liability company which includes as members immediately after the transfer substantially all of the same Persons that were general partners immediately prior to the transfer; or
- m. the transfer of stock, securities or other ownership interest of an entity that owns or operates the Establishment to a person who is an Affiliate, that directly or indirectly through one or more intermediates controls, or is controlled by, or under the common control with the transferee(s).

§9202. Transfer of an Establishment filing procedures;

- (a) A Person may not transfer an Establishment except in accordance with the provisions of this chapter.
- (b) Prior to the Transfer of an Establishment, the transferor(s) or the transferee(s) shall conduct All Appropriate Inquiry, pursuant to the standards set forth in the provisions and regulations pursuant to §9105, Chapter 91 of this Title.

(c) Prior to the Transfer of an Establishment, the transferor(s) or the transferee(s) must submit to the Secretary and the transferor(s) and transferee(s), all documents prepared or identified pursuant to subsection (b) above.

(d) Nothing contained in this chapter may be construed to enlarge, abridge, diminish or create an innocent-landowner defense pursuant to §9105(c)(2) of this title.

(e) Failure of the Secretary to notify a party in accordance with the provisions of this chapter does not constitute a waiver and does not limit the authority of the Secretary to enforce the provisions of this chapter.

§9203. Authority of the Secretary; regulations; effective date.

(a) The provisions of this chapter do not affect the authority of the Secretary under any other statute or regulation to issue any order to the transferor(s) or transferee(s) of an Establishment.

(b) The Secretary may adopt regulations to implement the provisions of this chapter.

(c) The provisions of this chapter shall become effective upon promulgation of regulations adopted pursuant to this chapter.

§9204. Enforcement.

The Secretary may issue an order or file a civil action in Superior Court pursuant to 7 Del. C. §6005 against any Person who fails to comply with any provision of this chapter. The Secretary may also bring an action in the Court of Chancery to enjoin the Transfer of an Establishment by a Person who fails to comply with §9202 or to compel the Establishment to provide financial assurance pursuant to §9206.

§9205. Termination of operations or filing for bankruptcy at a Chemical or Hazardous substance Establishment; procedures.

(a) Not later than the date of termination of all business or other activities at an Establishment or the date of filing for liquidation under the federal Bankruptcy Code, the Owner or operator of the Establishment shall file a notice with the Secretary which must include information regarding the Person or Persons employed by the Establishment who will be responsible for providing information regarding compliance with this section.

(b) Not later than 90 days after the termination of all business or other activities at an Establishment, the Owner or operator of the Establishment, or a trustee if the Owner or operator is in bankruptcy, shall:

(1) submit to the Secretary a list of all Chemical and Hazardous substances at the Establishment, where they are located and how they are stored, contained, stockpiled or otherwise located. Notwithstanding the foregoing, 'releases' as defined in 7 Del. C. §9103(20) are excluded;

(2) submit a plan to the Secretary for the emptying, draining, removal, use, sale, recycling, or otherwise disposal of all Chemicals or Hazardous substances in accordance with applicable law or in accordance with any Order of the Bankruptcy Court in the event of bankruptcy filing;

(3) post warning signs with up-to-date contact information around the perimeter of any Parcel where the soil is contaminated with a Hazardous substance to a level that poses potential risk to human health or the environment;

(4) submit a certification to the Secretary with regard to whether Chemicals or Hazardous substances identified in subsection (1) have been removed from the Parcel in accordance with applicable law; and

(5) maintain personnel, utilities, security, site management and other measures necessary to stabilize and secure the site.

(c) Following receipt of the required submittals under subsection (b) of this section, the Secretary shall, within 30 days, conduct an inspection of the Parcel and/or the Establishment to determine compliance with this section.

§ 9206. Financial assurance

(a) Within sixty days from the Transfer of an Establishment or the start up of a new Establishment, the Owner or operator shall provide to the Department evidence of financial assurance in accordance with the regulations promulgated pursuant to this chapter. Evidence of financial assurance must be in a sufficient form and amount necessary to insure that, upon termination, abandonment, or liquidation of all activities at the Establishment that all appropriate means are taken to stabilize and secure the Establishment, including but not limited to those activities as set forth in Section 9205(b).

(b) The Department shall promulgate regulations containing requirements for maintaining evidence of financial assurance as deemed necessary with respect to the size of the Establishment and the quantities of Chemicals maintained and generated as wastes thereon, needed to stabilize and secure the facility, taking into account, and giving due credit for, financial assurance established through other Department programs. Evidence of financial assurance may include, but not be limited to, insurance, guarantee, surety bond, letter of credit, proof of assets, qualification as a self-insurer, or other agreements acceptable to the Secretary.

(c) For the purposes of this section, an owner or operator does not mean the federal government, federal or state agencies, counties or municipalities.

Section 2. Amend Title 7 by adding new paragraph (r) to § 9104(2) to read as follows.

“r. To certify and decertify contractors to conduct remedial action. As a prerequisite for certification, the Department shall conduct written examinations, or other qualification criteria as deemed appropriate by the Department, within the State for the purpose of determining ability to conduct a remedial action. The Department may waive the examination for Persons who possess a valid certificate from another state, provided such certification is for similar work to be performed in Delaware. A remedial action shall be conducted under the direction and supervision of an individual possessing a valid certificate issued by the Department. Certification requirements for contractors shall commence 6 months after adoption of regulations. Certification shall be valid for 2 years. The fees for certification required pursuant to this chapter shall be established by the Department in its rules and regulations. The fees may be adjusted periodically but shall approximate and reasonably reflect all costs necessary to defray the expenses incurred by the Department in operating the certification program.’

Section 3. Amend Title 7 by adding a new definition “Contractor” to § 9103 to read as follows: (and re-number the remaining paragraphs accordingly)

(5) ‘Contractor’ means any corporation, company, association, firm, partnership, society, joint-stock company, sole proprietorship or individual that contracts to perform any remedial action under the remedial standards established in this Chapter.