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DELAWARE STATE SENATE
144th GENERAL ASSEMBLY

SENATE BILL NO. 168

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 3. 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) 'Chemical' means a 'hazardous chemical' as defined in Title 16, Chapter 63 Section 6302(6).

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

(3) 'Establishment' means any real property at which, or any business operation, or facility from which there
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 determined by the Department to qualify as a
Large Quantity Generator under Delaware's Regulations Governing Hazardous Waste.

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

(5) '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.

(6) 'Parcel' means piece or tract of land which contains an Establishment, as defined in subsection (3) of this
section, or on which is or was located any continuous business operation which contains or contained an Establishment.

(7) '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.

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

(9) 'Transfer an Establishment' means a transaction or proceeding through which there is a change in ownership of an interest in an Establishment. Change in ownership shall include, but not be limited to, sale, through purchase or through stock transfer or any combination thereof, merger, or spin-off to a wholly owned subsidiary, 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 is one or more of the following: the sibling, spouse, child, parent, grandparent, the child of a sibling, or the sibling of a parent of the transferee;
- i. the conveyance of an interest in an Establishment to a trustee of an inter vivos trust created by the transferor 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 of the transferor;
- j. the conveyance of a Parcel which has been developed solely for residential use and that use has not changed;
- k. the conversion of a general or limited partnership to a limited liability company;

- 49 l. the transfer of general partnership property held in the names of all of the general partners to another
50 general partnership which includes as general partners immediately after the transfer all of the same
51 Persons that were general partners immediately prior to the transfer; or
52 m. the transfer of general partnership property held in the names of all of the general partners to a
53 limited liability company which includes as members immediately after the transfer all of the same
54 Persons that were general partners immediately prior to the transfer.

55
56 §9202. Transfer of Establishments filing procedures; certification of cleanup

57 (a) A Person may not Transfer an Establishment except in accordance with the provisions of this chapter.

58 (b) Prior to the Transfer of an Establishment, the transferor or the transferee shall conduct All Appropriate
59 Inquiry, which shall include a Phase I Environmental Site Assessment Process and a Phase II Environmental Site
60 Assessment Process, if necessary, pursuant to the standards set forth in the provisions and regulations pursuant to §9105,
61 Chapter 91 of this Title.

62 (c) Prior to the Transfer of an Establishment, the transferor or the transferee must submit to the Secretary and
63 other Person or Persons party to the Transfer, all documents prepared or identified pursuant to subsection (b) above.

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

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

68 §9203. Authority of the Secretary; regulations.

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

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

72 §9204. Enforcement.

73 The Secretary may issue an order or file a civil action in Superior Court pursuant to 7 Del. C. §6005 against any
74 Person who fails to comply with any provision of this chapter. The Secretary may also bring an action in the Court of
75 Chancery to enjoin the Transfer of the Establishment by a Person who fails to comply with §9202 or to compel the
76 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 for termination of operations.

(a) Within sixty days from the transfer of control 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. 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 purpose of this subsection, a Person does not mean federal government, federal or state agencies, counties and municipalities.

Section 2. Amend Title 7 by inserting a new paragraph (b) to read as follows: (and re-letter the paragraph accordingly)

q. Contractor Certification Program. The Department shall adopt regulations for certification and decertification of 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 1. 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.

SYNOPSIS

This bill provides that any party seeking to Transfer an Establishment must conduct and submit All Appropriate Inquiry findings to Department of Natural Resources and Environmental Control and other parties to the transfer prior to the transfer. An Establishment is defined as a facility reporting a cumulative total of 1 million pounds or more of any combination of hazardous chemicals or substances under 16 Del. C. §6306 and/or has been classified as a Large Quantity Generator of hazardous wastes under the Delaware Regulations Governing Hazardous Waste.

The bill further provides that upon the closure of an Establishment, regardless of whether or not the closure is a part of a bankruptcy, the owner or operator of the Establishment must: (1) submit to the Department a list of all Chemicals and Hazardous substances at the Establishment; (2) submit a plan to the Secretary for the draining, removal, 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; (4) submit a certification to the Department with regard to whether regulated substances have been removed and disposed of in accordance with applicable law; and (5) maintain personnel, utilities, security, site management and other measures necessary to stabilize and secure the site. All Establishments subject to this bill must provide, within 60 days of transfer, evidence of financial assurance to cover expenses necessary to stabilize the facility at time of closure.

The bill also establishes a contractor certification program under Chapter 91.

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