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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991

ENROLLED

SENATE BILL NO. 204

(By Senators Ditmar and J. Manchin)

PASSED March 7, 1991

In Effect 90 days from Passage

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Senate Bill No. 204

(BY SENATORS DITTMAR AND J. MANCHIN)

[Passed March 7, 1991; in effect ninety days from passage.]

AN ACT to amend and reenact section fourteen, article five-h, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying the definition of owner for corrective action purposes.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article five-h, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

§20-5H-14. Corrective action for underground petroleum storage tanks.

1 (a) Prior to the effective date of regulations promul-
2 gated pursuant to subdivision (9) or (10), subsection
3 (b), section six of this article, the director is authorized
4 to:

5 (1) Require the owner or operator of an under-
6 ground storage tank to undertake corrective action
7 with respect to any release of petroleum from said
8 tank when the director determines that such correc-
9 tive action shall be done properly and promptly by the
10 owner or operator if, in the judgment of the director,

11 such action is necessary to protect human health and
12 the environment; or

13 (2) Undertake corrective action with respect to any
14 release of petroleum into the environment from an
15 underground storage tank if, in the judgment of the
16 director, such action is necessary to protect human
17 health and the environment.

18 The corrective action undertaken or required under
19 this subsection shall be such as may be necessary to
20 protect human health and the environment. The
21 director shall use funds in the leaking underground
22 storage tank response fund established pursuant to this
23 article for payment of costs incurred for corrective
24 action taken under subparagraph (2) of this subsection
25 in the manner set forth in subsection (e), section
26 twenty-one of this article. The director shall give
27 priority in undertaking corrective actions under this
28 subsection, and in issuing orders requiring owners or
29 operators to undertake such actions, to releases of
30 petroleum from underground storage tanks which
31 pose the greatest threat to human health and the
32 environment and where the director cannot identify a
33 solvent owner or operator of the tank who will
34 undertake action properly.

35 (b) Following the effective date of regulations
36 promulgated under subdivision (9) or (10), subsection
37 (b), section six of this article, all actions or orders of
38 the director described in subsection (a) of this section
39 shall be in conformity with such regulations. Follow-
40 ing such effective date the director may undertake
41 corrective action with respect to any release of petro-
42 leum into the environment from an underground
43 storage tank only if, in the judgment of the director,
44 such action is necessary to protect human health and
45 environment and one or more of the following situa-
46 tions exists:

47 (1) If no person can be found within ninety days, or
48 such shorter period as may be necessary to protect
49 human health and the environment, who is an owner
50 or operator of the tank concerned, subject to such

51 corrective action regulations and capable of carrying
52 out such corrective action properly.

53 (2) A situation exists which requires prompt action
54 by the director under this subsection to protect human
55 health and the environment.

56 (3) Corrective action costs at a facility exceed the
57 amount of coverage required pursuant to the provi-
58 sions of section ten of this article and, considering the
59 class or category of underground storage tank from
60 which the release occurred, expenditures from the
61 leaking underground storage tank response fund are
62 necessary to assure an effective corrective action.

63 (4) The owner or operator of the tank has failed or
64 refused to comply with an order of the director under
65 this section or of the board under section eighteen of
66 this article to comply with the corrective action
67 regulations.

68 (c) The director is authorized to draw upon the
69 leaking underground storage tank response fund in
70 order to take action under subdivision (1) or (2),
71 subsection (b) of this section if the director has made
72 diligent good faith efforts to determine the identity of
73 the party or parties responsible for the release or
74 threatened release and:

75 (1) He is unable to determine the identity of the
76 responsible party or parties in a manner consistent
77 with the need to take timely corrective action; or

78 (2) The party or parties determined by the director
79 to be responsible for the release or threatened release
80 have been informed in writing of the director's
81 determination and have been requested by the direc-
82 tor to take appropriate corrective action but are
83 unable or unwilling to take such action in a timely
84 manner.

85 (d) The written notice to a responsible party must
86 inform the responsible party that if that party is
87 subsequently found liable for releases pursuant to
88 subsections (a) or (b) of this section, he will be
89 required to reimburse the leaking underground stor-

90 age tank response fund for the costs of the investiga-
91 tion, information gathering and corrective action taken
92 by the director.

93 (e) If the director determines that immediate
94 response to an imminent threat to public health and
95 welfare or the environment is necessary to avoid
96 substantial injury or damage to persons, property or
97 resources, corrective action may be taken pursuant to
98 subsections (a) and (b) of this section without the prior
99 written notice required by subdivision (2), subsection
100 (c) of this section. In such a case the director must give
101 subsequent written notice to the responsible party
102 within fifteen days after the action is taken describing
103 the circumstances which required the action to be
104 taken without prior notice.

105 (f) As used in this subsection, the term "owner"
106 shall not include any person who, without participat-
107 ing in the management of an underground storage
108 tank and otherwise not engaged in petroleum produc-
109 tion, refining or marketing, holds indicia of ownership
110 primarily to protect the person's security interest in
111 the tank.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Tomer Heck
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.)

Harrell E. Selmes
.....
Clerk of the Senate

Donald G. Kopp
.....
Clerk of the House of Delegates

Walter B. Buntin
.....
President of the Senate

Bob C. Cline
.....
Speaker House of Delegates

The within *is approved* this the *20th*
day of *March*, 1991.

Yaston Caperton
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/14/91

Time 4:10 pm