WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1991

ENROLLED

SENATE BILL NO. 204

(By Senators Dittmar and J. Manchin)

PASSED March 7, 1991
In Effect 90 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:


1 (a) Prior to the effective date of regulations promulgated pursuant to subdivision (9) or (10), subsection (b), section six of this article, the director is authorized to:

5 (1) Require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum from said tank when the director determines that such corrective action shall be done properly and promptly by the owner or operator if, in the judgment of the director,
such action is necessary to protect human health and
the environment; or

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

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

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

(1) If no person can be found within ninety days, or
such shorter period as may be necessary to protect
human health and the environment, who is an owner
or operator of the tank concerned, subject to such
corrective action regulations and capable of carrying out such corrective action properly.

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

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

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

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

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

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

(d) The written notice to a responsible party must inform the responsible party that if that party is subsequently found liable for releases pursuant to subsections (a) or (b) of this section, he will be required to reimburse the leaking underground stor-
age tank response fund for the costs of the investiga-
tion, information gathering and corrective action taken
by the director.

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

(f) As used in this subsection, the term “owner”
shall not include any person who, without participat-
ing in the management of an underground storage
tank and otherwise not engaged in petroleum produc-
tion, refining or marketing, holds indicia of ownership
primarily to protect the person’s security interest in
the tank.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James Gladd
Chairman Senate Committee

Ernest F. Moore
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Barrel Edwards
Clerk of the Senate

Donald L. Crotty
Clerk of the House of Delegates

Paul Miller
President of the Senate

Robert C. Cole
Speaker House of Delegates

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

Yeston Carpenter
Governor