

PART IX
Hazardous Substance Cleanups

CHAPTER 91. DELAWARE HAZARDOUS SUBSTANCE
CLEANUP ACT
AS AMENDED EFFECTIVE JULY 13, 1995

Sec.	Sec.
9101. Short title. settlement	9112. Public hearings - Rule making, agreements and
9102. Declaration of purpose; applicability remedial actions.	
9103. Definitions. Fund.	9113. Hazardous Substance Cleanup
9104. Secretary's powers and duties.	9114. Tax assessment.
9105. Standard of liability. records.	9115. Notice in property
9106. Investigation and access. secrets.	9116. Confidentiality of trade
9107. Remedies.	9117. Obligations under bankruptcy.
9108. Certification of completion of remedy. orders.	9118. Cease and desist
9109. Enforcement.	9119. Injunctions.
9110. Public hearings - Violations. ordinances superseded.	9120. Inconsistent laws or
9111. Fraud	

Revisor's note. -- Section 2 of 67 Del. Laws, c. 326, provides: "The Department of Natural Resources and Environmental Control and the Department of Finance shall agree to an amount to be charged by the Department of Finance to the Fund described in § 9113 of Title 7 to reflect the actual costs, direct and indirect, of administering and collecting the taxes dedicated to the Fund. When received by the Department of Finance, such charges shall be considered General Fund 'expenditure reducing' items."

Section 5 of 67 Del. Laws, c. 326, provides: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable."

Section 6 of 67 Del. Laws, c. 326, provides: "Section 1 of this act shall be effective upon enactment into law and until Dec. 31, 2001, unless reenacted. Section 2 of this act shall be effective upon its enactment into law. Sections 3,4, and 7 of this act shall be effective with respect to all receipts occurring after Dec. 31, 1990, and before Jan. 1, 2001."

§ 9101. SHORT TITLE.

This chapter shall be known and may be cited as the "Delaware Hazardous Substance Cleanup Act." (67 Del. Laws, c. 326, § 1.)

§ 9102. DECLARATION OF PURPOSE; APPLICABILITY.

(a) The General Assembly recognizes that large quantities of hazardous substances are and have been generated, transported, treated, and stored within the State. The General Assembly also recognizes that some hazardous substances have been stored or disposed of at facilities in the State in a manner insufficient to protect public health or welfare or the environment. The General Assembly finds that the release of a hazardous substance constitutes an imminent threat to public health or welfare or the environment of the State. The General Assembly intends by the passage of this chapter to exercise the powers of the State to require prompt containment and removal

of such hazardous substances, to eliminate or minimize the risk to public health or welfare or the environment, and to provide a fund for the cleanup of the facilities affected by the release of hazardous substances.

(b) The General Assembly finds that private parties should be provided with encouragement to exercise their responsibility to clean up the facilities for which they are responsible, but that if they refuse to do so, then the State should conduct the cleanup and recover the costs thereof from the private parties.

(c) The General Assembly recognizes the need to remedy contaminated facilities and to promote opportunities and provide incentives to encourage the remedy of such facilities to yield economic revitalization and redevelopment within the State.

(d) The General Assembly finds that in order to effectuate the purposes of this chapter to remedy contamination resulting from past acts and to address more equitably the issue of who should bear the costs of remediation, § 9105 of this title shall apply to all responsible parties without regard to the date of enactment of this chapter or any amendments thereto. (67 Del. Laws, c. 326, § 1.)

§ 9103. DEFINITIONS.

As used in this chapter:

(1) "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could

not have been prevented or avoided by the exercise of due care or foresight.

(2) "Allowable interest rate" means a rate of interest 5% over the federal reserve discount rate.

(3) "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended.

(4) "Department" means the Department of Natural Resources and Environmental Control.

(5) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous substance into or on any land, water or into the air so that such hazardous substance or any constituent thereof may enter the environment.

(6) "Environment" means the navigable waters, the waters of the contiguous zone, ocean waters, and any other surface water, ground water, drinking water supply, land surface or subsurface strata or ambient air within the State.

(7) "Facility" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, aircraft, or any site or area where a hazardous substance has been generated, manufactured, refined, transported, stored, treated, handled, recycled, released, disposed of, placed or otherwise come to be located.

(8) "Fund" means the Hazardous Substance Cleanup Fund created pursuant to § 9113 of this title.

(9) "Hazardous substance" means:

- a. Any hazardous waste as defined in Chapter 63 of Title 7 or any hazardous waste designated by regulation promulgated pursuant to Chapter 63 of title 7;
- b. Any hazardous substance as defined in CERCLA; or
- c. Any substance determined by the Secretary through regulation to present a risk to public health or welfare or the environment if released into the environment.

(10) "Imminent threat of release" means potential for a release which requires action to prevent or mitigate damage to the environment or endangerment to public health or welfare which may result from such a release.

(11) "Natural resources" means land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by Delaware, the United States, any foreign government, any local government, or any Indian tribe.

(12) "Owner or operator" means:

- a. Any person owning or operating a facility.
- b. Any person who owned, operated, or otherwise controlled activities at a facility.
- c. The term "owner or operator" does not include an agency of the State or unit of local government that acquired title or control involuntarily through bankruptcy, tax delinquency, abandonment or other circumstances.

d. The term "control" does not include regulation of the activity by a federal, state or local government agency.

e. The term "owner or operator" does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect his security interest in the facility.

(13) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, school district, conservation district, federal government agency, Indian tribe or interstate body.

(14) "Plan of remedial action" means a detailed plan describing cleanup actions and related information for the containment or permanent removal and disposal of hazardous substances from a facility.

(15) "Potentially responsible party" means any person identified pursuant to §9105(a)(1) through (6) of this title as a person liable with respect to a facility.

(16) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes:

a. Any release which results in exposure to a person solely within his or her workplace, with respect to a claim which such person may assert against his or her employer; provided, however, that this exclusion does

not apply to any such release which also results in exposure to the environment.

- b. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;
- c. The appropriate application of fertilizer and pesticide;
- d. Any discharges in compliance with state permits issued in conformance with this title and federally permitted releases under CERCLA.

(17) "Remedial Action" means the containment, contaminant mass or toxicity reduction, isolation, treatment, removal, cleanup, or monitoring of hazardous substances released into the environment, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate harm or risk of harm to the public health or welfare or the environment which may result from a release or an imminent threat of a release of hazardous substances.

(18) "Remedy" means any action, response or expenditure consistent with the purposes of this chapter to identify, minimize or eliminate any imminent threat posed by any hazardous substances to public health or welfare or the environment including preparation of any plans, conducting of any studies and any investigative, oversight of remedy or monitoring activities with respect to any release or imminent threat of release of a hazardous substance and any health assessments, risk assessments or health effect studies or natural resource damage assessments conducted in order to determine the risk or potential risk to public health or welfare or the environment.

(19) "Secretary" means Secretary of the Department or his or her designee.

(20) "Site Assessment" means the assessment of a facility and/or property to determine whether hazardous substances have entered the environment. (67 Del. Laws, c. 326, § 1.)

§ 9104. SECRETARY'S POWERS AND DUTIES.

(a) The Secretary may exercise the following powers in addition to any other powers granted by law:

(1) The Secretary shall take any actions necessary to carry out the provisions of this chapter, including but not limited to adoption of emergency or interim regulations, when immediate promulgation of regulations is necessary to implement this chapter prior to the adoption of final regulations.

(2) The Secretary shall, after notice and public hearing, promulgate and revise such regulations as deemed necessary for the implementation, administration and enforcement of this chapter. Such regulations may include provisions waiving or limiting the applicability of this chapter which the Secretary determines to be adequately regulated by state or federal statute or regulation.

(3) The Secretary may, after notice and public hearing, exempt certain facilities or properties or classes of facilities or properties from the provisions of this chapter upon finding that these facilities or properties do not pose an imminent threat to public health or welfare or the environment.

(4) The Secretary shall plan, study or conduct, or order a potentially responsible party to plan, study or conduct, appropriate actions to remedy a release or imminent threat of release.

(b) The Secretary shall implement all provisions of this chapter to the maximum extent practicable, including conducting investigations and remedies when appropriate. The Secretary shall, after notice and public hearing, promulgate and revise as appropriate, regulations to:

(1) Establish criteria for determining a priority list among facilities. These criteria shall assure that facilities are ranked by a system that objectively assesses the relative degree of risk to public health or welfare or the environment caused by releases from such facilities.

(2) Establish procedures:

a. For identifying facilities with a release or imminent threat of release;

b. For conducting site assessments, preliminary site evaluations and comprehensive site investigations;

c. For identifying potentially responsible parties;

d. For notifying a person of his or her liability as a potentially responsible party;

e. For determining the appropriate type of settlement agreement that may be entered into by potentially responsible parties or any person who agrees to perform a remedy;

f. For providing potentially responsible parties or any other person with a reasonable opportunity to enter into a settlement agreement for a remedy by which potentially

responsible parties or any other person may propose one or more remedial alternatives;

g. For identifying cleanup levels based on site specific risks;

h. For public notice and an opportunity for public comment on the proposed plan of remedial action and proposed consent decrees;

i. For conducting a remedy;

j. For public participation in the decision for a remedy at a facility;

k. For granting or denying a certificate of completion of remedy;

l. For placing a notice in the records of the real property pursuant to § 9115 of this title;

m. For managing the Fund established pursuant to § 9113 of this title;

n. For assessing natural resource damages;

o. For providing criteria governing public funding of remedial costs when the Secretary enters into a settlement agreement that requires the Secretary to provide a specified amount of money from the Fund.

(3) Establish deadlines for negotiation processes with potentially responsible parties for an agreement providing for a voluntary remedy pursuant to § 9107 of this title, and for initiating an investigation and remedying releases at or from a facility by potentially responsible parties.

(c) (1) The Secretary shall, as part of the budget submittal, submit an annual report to the Governor and the General Assembly of the State, setting forth in detail progress on remedies and may submit such additional reports from time to

time to the Governor and General Assembly as deemed desirable by the Secretary.

(2) The Secretary shall prepare an annual budget for the proposed use of the Fund and cause an audit of the fiscal affairs to be made annually and shall, as part of the budget submittal, furnish a copy of such audit report together with such additional information or data with respect to the affairs as he or she may deem desirable to the Governor and General Assembly of the State.

(3) The Secretary shall, as part of the budget submittal, provide 5 year projections of costs and revenues associated with the Fund, and the amount of the obligated and unobligated balance in the Fund. (67 Del. Laws, C. 326, § 1.)

§ 9105. STANDARD OF LIABILITY.

(a) The following persons are liable with respect to a facility from which there is or has been a release or imminent threat of release, except as provided in subsection (c) of this section:

(1) Any person who owned or operated the facility at any time.

(2) Any person who owned or possessed a hazardous substance and who by contract, agreement or otherwise arranged for disposal or treatment of a hazardous substance at the facility.

(3) Any person who arranged with a transporter for transport, disposal or treatment of a hazardous substance to the facility.

(4) Any person who generated, disposed of or treated a hazardous substance at the facility.

(5) Any person who accepted any hazardous substance for transport to the facility, when the facility was selected by the transporter.

(6) Any person who is responsible in any other manner for a release or imminent threat of release.

(b) Each person who is liable under this section is strictly liable, jointly and severally, for all costs associated with a release from a facility and for all natural resource damages resulting from the release. The Secretary may recover all costs and damages from all responsible parties. The amounts recoverable in an action under this chapter shall include interest on the amounts recoverable through regulations developed pursuant to §§ 9104 and 9109 of this title. Such interest shall accrue from the date the expenditure was incurred. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be at the established allowable interest rate.

(c) The following persons are not liable under this section:

(1) Any person who can establish that the release or imminent threat of release for which the person would be otherwise liable was caused solely by:

a. An act of God;

b. An act of war; or

c. An act or omission of a 3rd party other than:

1. An employee or agent of the person asserting the defense; or

2. Any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly with the person asserting this defense to

liability. This defense applies only when the person asserting the defense has exercised due care with respect to the hazardous substance, the foreseeable acts or omissions of the 3rd party, and the foreseeable consequences of those acts or omissions.

(2) Any person who is an operator, past operator, owner, or past owner of a facility and who can establish that at the time the facility was acquired or operated by the person, the person had no knowledge or reason to know of any release or imminent threat of release. This subdivision (c)(2) is limited as follows:

a. To establish that a person had no knowledge or reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous uses of the property, consistent with good commercial or customary practice, in an effort to minimize liability. In determining what constitutes an appropriate inquiry the Secretary shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection. The standard for determining knowledge or reason for knowledge hereunder shall be based on standard engineering practices at the time of operation or ownership of the facility;

b. The defense contained in subdivision (c)(2) of this section is not available to any person who had actual knowledge of the release or imminent threat of release when the person owned the real property and subsequently transferred ownership of the facility without first disclosing such knowledge to the buyer;

c. The defense contained in subdivision (c)(2) of this section is not available to any person who, by any act or omission, caused or contributed to the release or imminent threat of release at or from the facility.

(3) A person who acquires ownership or control of a property to realize on a security interest held by the person in that property or a fiduciary which has a legal title to or manages any property for purposes of administering an estate or trust of which such property is part; provided, however, that this exemption shall not relieve a person from liability under this Section where such liability is based on conduct entirely independent from that covered by this exemption.

(d) A person who expends moneys performing a remedy or any remedial action under this chapter or reimbursing the State for any remedial action may bring an action against any responsible party as defined in subsection (a) of this section who has not entered into a settlement agreement with the Secretary. In an action authorized by this section, the person bringing the action shall be entitled to reimbursement for the costs incurred which are consistent with this chapter and contribution for moneys expended to reimburse the state for its expenses. (67 Del. Laws, c. 326, § 1.)

(e) Where the Secretary has issued a certification of completion of remedy pursuant to § 9108 of this title with respect to a remedy performed at a facility, any person who owns, operates or otherwise controls activities at the facility after the date of issuance of the certification shall not, by virtue of that later ownership, operation or control, be liable for the release or imminent threat of release addressed in the certification, or for any future release or imminent threat of release attributable to conditions existing prior to the issuance of the certification, provided such person does not interfere or permit any interference with any aspect of the remedy addressed by the certification of completion of remedy.

(f) The exemption contained in Subsection (e) shall also apply to any person who, in connection with the sale, lease, acquisition or transfer of a facility, enters into a settlement agreement with the Secretary for a remedy at the facility, provided that the remedy is satisfactorily conducted and the Department issues a certification of completion of remedy. The Secretary, in the settlement agreement, may place conditions or limitations on the scope of the exemption granted under this Subsection.

§ 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 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 gaining access under this section, if requested in advance, shall split a sample with the operator, or person in charge 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.

(b) If the Secretary determines that:

(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. (67 Del. Laws, C. 326, § 1.)

§ 9107. REMEDIES.

(a) When the Secretary has reason to believe that a release or imminent threat of release will require a remedy, he or she shall notify the potentially responsible party with respect to the release or imminent threat of release, and provide him or her with an opportunity to enter into a settlement agreement providing for a remedy consistent with regulations developed pursuant to § 9104 of this title. The Secretary may provide any person who has knowledge of a release of a hazardous substance at a facility and agrees to perform a remedy with an opportunity to enter into a settlement agreement providing for a remedy consistent with regulations developed pursuant to Section 9104 of this title.

(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 Section 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. 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, he or she may choose to resolve a person's liability with the State under this Section through use of settlement agreements entered into pursuant to CERCLA.

(c) A person who has resolved his or her liability to the State under this section is not liable for claims for contribution regarding matters addressed in the settlement. The settlement

does not discharge any of the other potentially responsible parties, but it reduces the total potential liability of others to the State by the amount of the settlement exclusive of § 9109 of this title.

(d) The Secretary may enter into a settlement agreement that requires the Secretary to provide a specified amount of money from the Fund to help defray the costs of implementing the remedy. These funds may be provided only in circumstances where the Secretary finds it would expedite or enhance remediation or achieve equity with respect to the payment of remedial costs. The Secretary may recover the amount of public funding provided under this section from a potentially responsible party who has not entered into a settlement agreement under this section or fulfilled all obligations under the agreement. For purposes of such a cost recovery, the public funding shall be considered as remedial costs paid by the Secretary.

(e) Before conducting a remedial action, the Secretary shall:

(1) Propose a plan of remedial action based on any investigation or study conducted by or for the Secretary, the potentially responsible party, or others;

(2) Provide public notice of the proposed plan of remedial action and an opportunity to comment on the plan as well as the investigation upon which the proposed plan of remedial action is based;

(3) Prepare a final plan of remedial action with due consideration of the comments received and any other study or investigation conducted by or for the Secretary.

(f) The proposed and final plan of remedial action and the basis for it, as well as all comments received by the Secretary, constitute the remedial decision record of the Secretary. The

Secretary shall maintain a remedial decision record for a period that he or she deems appropriate based upon the remedy being implemented and the future use of the facility.

(g) Where the Secretary has developed a remedial decision record for a remedy and the Secretary has conducted the remedy in accordance with the record, in any action brought to recover costs, the plan of remedial action shall be presumed reasonable and necessary unless demonstrated to be arbitrary and capricious by clear and convincing evidence. (67 Del. Laws, c. 326, § 1.)

§ 9108. CERTIFICATION OF COMPLETION OF REMEDY.

(a) Upon completion of a remedy at a facility, the owners, parties to the settlement agreement or parties responding to an order, may apply for a certification of completion of remedy from the Secretary pursuant to regulations promulgated under § 9104 of this title. For the purposes of this Section, the Secretary may consider a remedy complete when the remedial action is operational and functional; provided, however, that the Secretary may place conditions or limitations in the certification of completion of remedy which identify those portions of the final plan of remedial action, including but not limited to operation and maintenance, and compliance monitoring, which must continue to be performed, and which provide for the performance of additional remedies in the event that the remedial goals contained in the final plan of remedial action are not achieved as required by the plan and the regulations promulgated under Section 9104 of this title.

(b) The Secretary shall grant or deny an application for a certification of completion of remedy within 180 days of the application with stated reasons. (67 Del. Laws, c. 326, § 1.)

§ 9109. ENFORCEMENT.

(a) Whenever, in the opinion of the Secretary, a person:

- (1) Is a potentially responsible party; and
- (2) Has been notified of his potential liability pursuant to §§ 9104 and 9105 of this title; and
- (3) Has not submitted a proposed settlement or has submitted a proposed settlement and the Secretary has rejected the proposal, the Secretary may, after conducting a hearing pursuant to §§ 6004 and 6006 of this title, issue such order as he or she deems appropriate.

(b) Whenever the Secretary determines that there exists an imminent danger that requires immediate remedy to protect public health or welfare or the environment, the Secretary may seek such injunctive relief or issue an order without prior notice or opportunity to submit a proposed settlement agreement.

(c) To enforce the order, the Secretary may bring an action in the Court of Chancery against any potentially responsible party who without sufficient cause, fails to comply with an order issued under subsection (a) or (b) of this section.

(d) The Secretary may bring an action in the Superior Court 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 against any potentially responsible party to collect remedial costs incurred by the Secretary , or for a party's refusal to

comply, without sufficient cause, with an order issued under subsection (a) or (b) of this section.

(f) The Secretary may issue an order as he or she deems appropriate to any person who fails to provide the required information or documents under Section 9106(a)(1), who fails to provide access under Section 9106(a)(2), or who fails to report a release as required by the Regulations promulgated pursuant to this chapter.

(g) The Secretary may bring an action in Superior Court 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 Subsection (h)(2) of this Section.

(h) In any action brought under subsection (e) of this section for a refusal to comply with an order, the person found responsible shall be liable for payment of:

(1) An amount at least equal to, but not greater than 3 times the amount of, any remedial costs incurred by the State as a result of the person's refusal to comply; and

(2) A civil penalty of up to \$10,000 per day for each day the person refuses to comply. For purposes of determining a civil penalty, the period of noncompliance shall be deemed to commence on the day of the Secretary's decision and continue until full compliance with the terms of the order is achieved. (67 Del. Laws, c. 326, § 1.)

§ 9110. PUBLIC HEARINGS - VIOLATIONS.

(a) Any hearing involving allegations of violations of this chapter held by the Secretary shall be conducted as follows:

(1) For any hearing on an alleged violation, notification shall be served upon the alleged violator as summonses are served or by registered or certified mail not less than 20 days before the time of said hearing. Not less than 20 days notice of the hearing shall also be published in a newspaper of general circulation in the county in which the activity is proposed or the alleged violation has occurred and in a daily newspaper of general circulation throughout the State.

(2) The alleged violator may appear personally or by counsel at the hearing and produce any competent evidence in his behalf. The Secretary or the Environmental Appeals Board or its duly authorized designee may administer oaths, examine witnesses and issue, in the name of the Department or the Environmental Appeals Board, notices of hearings or subpoenae requiring the testimony of witnesses and production of books, records or other documents relevant to any matter involved in such hearing; and subpoenae shall also be issued at the request of the alleged violator. In case of contumacy or refusal to obey a notice of hearing or subpoena under this section, the Superior Court in the county in which the hearing is held shall have jurisdiction upon application of the Secretary or the Chairman of the Environmental Appeals Board to issue an order requiring such person to appear and testify or produce evidence as the case may require.

(3) A record from which a verbatim transcript can be prepared shall be made of all hearings and shall, along with the exhibits and other documents introduced by the Secretary or other party, constitute the record. The expense of preparing any transcript shall be borne by the person

requesting it. The Secretary or the Environmental Appeals Board or its duly authorized designee shall make findings of fact based on the record. The Secretary or the Environmental Appeals Board shall then enter an order that will best further the purpose of this chapter, and the order shall include reasons. The Secretary shall promptly give written notice to the persons affected by such order.

(4) The Secretary may collect, from a violator finally adjudged liable, the necessary expenses of the Department for conducting the hearing. Any moneys collected under this section shall be deposited in the Fund pursuant to § 9113 of this title.

(b) (1) Any person or persons, aggrieved by any decision of the Secretary rendered pursuant to this chapter, may appeal the decision to the Environmental Appeals Board in accordance with § 6008 of this title.

(2) Any person who is substantially affected by a decision of the Environmental Appeals Board may appeal to the Superior Court in accordance with § 6009 of this title.

(3) No appeal shall operate to stay automatically any action of the Secretary, but upon application, and for good cause, the Secretary or the Superior Court may stay the action pending disposition of the appeal.

(c) The decisions of the Secretary issued pursuant to the provisions of this section are reviewable only as provided in subsection (b) of this section. (67 Del. Laws, c. 326, § 1.)

§ 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 for each fraudulent act.

(b) The Secretary may bring an action in the Superior Court to establish and collect a civil penalty for which a person is liable for fraud under this chapter. (67 Del. Laws, c. 326, § 1.)

§ 9112. PUBLIC HEARINGS -- RULE MAKING, SETTLEMENT AGREEMENTS AND REMEDIAL ACTIONS.

Public hearings shall be held on regulations developed pursuant to this chapter, and, if the Secretary receives a meritorious request for a public hearing from any person on the proposed consent decree and the proposed plan of remedial action in accordance with §§ 6004 and 6006 of this title, as well as any additional notice and hearing requirements the Secretary has adopted by regulation. (67 Del. Laws, c. 326, § 1.)

§ 9113. HAZARDOUS SUBSTANCE CLEANUP FUND

(a) There shall be established in the State Treasury and in the accounting system of the State a special fund to be known as the Hazardous Substance Cleanup Fund ("The Fund").

(b) The following moneys shall be deposited into the Fund:

(1) All the taxes assessed pursuant to § 9114 of this title;

- (2) All remedial costs recovered pursuant to this chapter;
 - (3) Penalties collected or recovered pursuant to this chapter;
 - (4) Penalties collected or recovered pursuant to this chapter, not to include penalties assessed on any gross receipts tax surcharge provided by this chapter;
 - (5) The State Treasurer shall credit to the Hazardous Substance Cleanup Fund such amount of interest as determined by this paragraph upon such Fund. On or before the last day of each month, the State Treasurer shall credit the Fund with interest on the average balance in the Fund for the preceding month. The interest to be paid to the Fund shall be that proportionate share, during such preceding month, of interest to the State as the Fund's and the State's average balance is to the total State's average balance. The Fund's average balance shall be determined by averaging, in each instance, the balances at the beginning of each month and the balances at the end of that month; and
 - (6) Any other money appropriated or transferred to the account by the General Assembly
- (c) Money in the Fund may be used by the Secretary only to carry out the purposes of this chapter, including but not limited to the following activities:
- (1) Implementing the hazardous substance cleanup program required under this chapter.
 - (2) Providing a remedy with respect to releases or imminent threats of release of a hazardous substance at or from facilities.

(3) Providing for state matching funds required under the CERCLA, as well as future operations and maintenance costs for facilities at which a state match is required.

(4) Reimbursing any person for reasonable remedial costs incurred with the prior authorization of the Secretary in responding to a hazardous substance remedy, including remedies of releases from underground storage tanks, pursuant to authorization of the Secretary.

(5) Conducting emergency response actions pursuant to §§ 9106, 6308 and 7406 of this title.

(6) Through the Delaware Development Office, providing low interest loans to nonprofit organizations and small businesses who are potentially responsible parties with an executed settlement agreement with the Department.

(7) Payment to the Division of Revenue for the costs of administering § 9114 of this title.

(d) No greater than 15 percent of the moneys deposited into the Fund shall be used for administering this chapter without approval of the Joint Finance Committee.

(e) Any expenditures of moneys from the Fund on sites not budgeted for under § 9104(c)(2) of this title must be approved by the Speaker of the House and the President Pro Tempore of the Senate. (67 Del. Laws, c. 326, § 1.)

Revisor's note.--Section 2 of 67 Del. Laws, c. 326, provides: "The Department of Natural Resources and Environmental Control and the Department of Finance shall agree to an amount to be charged by the Department of Finance to the Fund described in § 9113 of Title 7 to reflect the actual costs, direct and indirect, of administering and collecting the taxes dedicated to the Fund. When received by

the Department of Finance, such charges shall be considered General Fund 'expenditure reducing' items."

§ 9114. TAX ASSESSMENT.

(a) With regard to gross receipts received after December 31, 1990, and before January 1, 2001, 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 derived from the sale of petroleum or petroleum products. For purposes of this section and Chapter 29 of Title 30, exclusions from the gross receipts tax shall first be computed by including in said exclusions, to the extent possible, receipts deriving from sales not subject to the tax provided in this section.

(b) The surcharge provided by this section shall be remitted to the Division of Revenue on forms issued by the Director of Revenue and subject to such regulations and requirements as shall be prescribed by the Director of Revenue. The Director of Revenue shall deposit the additional tax provided in this section to the credit of the special fund described in § 9113 of this title.

(c) Each wholesaler or importer may list, as a separate line item on an invoice, the amount of the fees due under this section.

(d) Notwithstanding the provisions of subsection (a) of this section, with regard to gross receipts received after June 30, 1991, and before April 1, 1992, for purposes only of this section but not for other taxes applied against gross receipts on petroleum products in Chapter 29 of Title 30, the term

"petroleum or petroleum projects" shall not include crude oil.
(67 Del. Laws, c. 326 § 1; 68 Del. Laws, c. 183 § 1.)

Revisor's note.--Section 2 of 68 Del. Laws, c. 183, provides: "If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable." **Effect of amendments.** -- 68 Del. Laws, c. 183, effective July 17, 1991, added (d).

§ 9115. NOTICE IN PROPERTY RECORDS.

(a) Pursuant to § 9104(b)(2) of this title, when a release of a hazardous substance that has been determined by the Secretary to be a threat to public health or the environment has occurred at a facility or property on which the facility is located, the owner of the property shall place a notice in the records of real property kept by the Recorder of deeds of the county in which the property is located. The notice shall:

- (1) Identify the facility;
- (2) Identify the owner of the facility and the person causing the notice to appear;
- (3) State that a release occurred at or from the facility;
- (4) State the date the release occurred; and
- (5) Direct further inquiries to the Secretary.

(b) Any certification of completion of remedy issued in accordance with § 9108 of this title shall be promptly filed by the owner with the records of real property kept by the recorder

of deeds of the county in which the facility is located and shall identify the facility, the owner of the facility, and the date of issuance of the certification of completion. (67 Del. Laws, c. 326, § 1.)

§ 9116. CONFIDENTIALITY OF PROPRIETARY INFORMATION.

Information obtained by the Secretary under this chapter shall be available to the public as provided in Chapter 100 of Title 29, unless the Secretary certifies such information to be proprietary. The Secretary may make such certification where any person shows to the satisfaction of the Secretary that the information, or parts thereof, if made public, would divulge methods, processes or activities entitled to protection as trade secrets or as confidential financial or commercial information. Nothing in this section shall be construed as limiting the disclosure of information by the Secretary to any officer, employee or authorized representative of the state or federal government to effectuate the purposes of this chapter. Furthermore, nothing in this Section shall prevent the Secretary from including in the remedial decision record information concerning the cost of the remedy or the manner in which it is performed. Prior to disclosure of information certified by the Secretary to be proprietary to an authorized representative who is not an officer or employee of the state or federal government, the person providing the proprietary information may require the representative to sign an agreement prohibiting disclosure of such information to anyone not authorized by this chapter or the terms of the agreement. Such agreement shall not preclude

disclosure by the representative to any state or federal government officer or employee concerned with effecting this chapter. (67 Del. Laws, c. 326, § 1.)

§ 9117. OBLIGATIONS UNDER BANKRUPTCY.

No obligations imposed by this chapter shall constitute a lien or claim which may be limited or discharged in a bankruptcy proceeding. All obligations imposed by this chapter shall constitute continuing regulatory obligations imposed by the State. (67 Del. Laws, c. 326, § 1.)

§ 9118. CEASE AND DESIST ORDERS.

The Secretary shall have the power to issue a cease and desist order to any person violating any provision of this chapter ordering such person to cease and desist from such violation, provided that any cease and desist order issued pursuant to this section shall expire:

- (1) After 30 days of its issuance; or
- (2) Upon withdrawal of said order by the Secretary; or
- (3) When the order is superseded by an injunction. (67 Del. Laws, c. 326, § 1.)

§ 9119. INJUNCTIONS.

The Court of Chancery shall have jurisdiction to enjoin violations of this chapter. (67 Del. Laws, c. 326, § 1.)

**§ 9120. INCONSISTENT LAWS OR ORDINANCES
SUPERSEDED.**

All laws or ordinances inconsistent with any provisions of this chapter are hereby superseded to the extent of the inconsistency. (67 Del. Laws, c. 326, § 1.)

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