

Senate Bill No. 363–Senator Titus

CHAPTER.....

AN ACT relating to hazardous materials; providing incentives for the voluntary removal or rendering harmless of environmental contamination; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 459 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 23, inclusive, of this act.

Sec. 2. *As used in sections 2 to 23, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Administrator” means the administrator of the division.*

Sec. 3.5. *“Commission” means the state environmental commission.*

Sec. 4. *“Division” means the division of environmental protection of the state department of conservation and natural resources.*

Sec. 5. *“Eligible property” means real property located in this state that:*

1. Except as otherwise provided in section 11.5 of this act, is not:

(a) Listed, proposed for listing or eligible for listing on the National Priorities List contained in Appendix B of Part 300 of Title 40 of the Code of Federal Regulations; and

(b) Owned, managed or controlled by a person or governmental entity subject to a pending investigation or ongoing enforcement action of the Federal Government pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq.;

2. Is not owned, managed or controlled by a person or governmental entity subject to a pending investigation or ongoing enforcement action of the division with respect to that real property; and

3. Contains the site or probable site of a release of a hazardous substance.

Sec. 6. *“Hazardous substance” means a substance or combination of substances whose presence gives rise to liability or potential liability on the part of an owner or operator pursuant to NRS 459.537 or 42 U.S.C. § 9607(a).*

Sec. 7. *“Participant” means a person whose application to participate in the program has been approved by the administrator.*

Sec. 8. *“Program” means voluntary cleanup and relief from liability pursuant to sections 2 to 23, inclusive, of this act.*

Sec. 9. “Prospective purchaser” means a person who is not a responsible party and who has entered into a contract, or holds an option, to purchase an eligible property for its fair market value in a transaction at arm’s length.

Sec. 10. “Remedial agreement” means an agreement between a participant and the division specifying the action to be taken to remove or remedy hazardous substances present on an eligible property.

Sec. 11. “Responsible party” means:

1. A current or former owner or operator of a site or facility who caused or contributed to the release of a hazardous substance at the site or facility; and

2. A generator or transporter of a hazardous substance who caused or contributed to the release of the hazardous substance at a site or facility.

Sec. 11.5. Real property located in this state that is listed, proposed for listing or eligible for listing on the National Priorities List contained in Appendix B of Part 300 of Title 40 of the Code of Federal Regulations or that is owned, managed or controlled by a person or governmental entity subject to a pending investigation or ongoing enforcement action by the Federal Government pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq., shall be deemed to be eligible property if:

1. The property satisfies the elements of the definition of eligible property set forth in subsections 2 and 3 of section 5 of this act; and

2. The reason for which the property was listed or is proposed or eligible for listing on the National Priorities List or for the investigation or enforcement action by the Federal Government is unrelated to the hazardous substance that a participant intends to remove from or remediate on the property pursuant to a remedial agreement submitted pursuant to section 13 of this act.

Sec. 12. 1. A responsible party with respect to an eligible property, or a prospective purchaser of an eligible property may apply to participate in the program. The application must be made to the administrator in writing and must include:

(a) An environmental assessment of the property, including the source, nature and location of all hazardous substances known to, or reasonably believed by, the applicant to be located on the property;

(b) A proposed general plan for removal or remediation on the property; and

(c) The application fee and any other information required pursuant to the regulations adopted by the commission pursuant to section 22.5 of this act.

2. The administrator shall approve or deny an application made pursuant to subsection 1 within 60 days after its submission, unless for good cause he extends the period for not more than an additional 30

days. Notice of an extension must be delivered to the applicant before the expiration of the original period for processing the application.

3. If the administrator denies an application, he shall deliver to the applicant, within 30 days after the denial, a written explanation of the reasons for denial.

Sec. 13. 1. After an application is approved, the participant shall submit a remedial agreement to the administrator for his approval.

2. The administrator shall approve a remedial agreement only if:

(a) The agreement:

(1) Provides for the recovery by the division of all direct and indirect costs, in excess of the application fee, of overseeing and supervising the removal or remediation of the hazardous substance or substances on the property;

(2) Specifies the substance to be removed from or remediated on the property, the actions to be taken and the standards to be met with respect to removal or remediation, and the uses for which the property will not be suitable after the removal or remediation is carried out; and

(3) Includes a grant to the administrator of an irrevocable easement or right of entry onto the property to oversee and observe the work during and after the removal or remediation;

(b) The removal or remediation of the hazardous substance or substances will:

(1) Restore the property to the condition to which it would be restored if the division caused action to be taken pursuant to NRS 459.537;

(2) Not cause, contribute to or worsen any release or threatened release of a hazardous substance on the property;

(3) Adequately protect human health and the environment; and

(4) Comply with any applicable regulations adopted by the commission pursuant to section 22.5 of this act; and

(c) The participant is financially capable of undertaking the removal or remediation of the hazardous substance or substances.

3. If the participant is not the owner of the property, the administrator shall not approve a remedial agreement unless the owner first agrees to the terms of the agreement.

4. Before approving a remedial agreement, the administrator shall:

(a) Publish a notice and brief summary of the agreement in a newspaper of general circulation in the county where the property is located;

(b) Make reasonable efforts to provide personal notice to all responsible parties known to him and to all owners and residents of property within 500 yards of the outer boundary of the property on which the work is to be performed;

(c) Provide 30 days for the submission of written comments; and

(d) Hold a public hearing in the county where the property is located

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5. If the administrator disapproves a proposed remedial agreement, he shall deliver to the participant, within 30 days after the disapproval, a written explanation of the reasons for the disapproval.

Sec. 14. 1. After a participant has completed the action specified in his remedial agreement for the removal or remediation of hazardous substances, the participant shall certify to the administrator that the action has been completed according to the agreement. After the administrator has verified the certification, he shall issue the participant a certificate of completion.

2. A certificate of completion must:

(a) Contain the name of the participant and of any other person relieved from liability by the certificate and the legal description of the property to which it relates;

(b) Summarize the nature of the removal or remediation performed on the property, and the nature of the relief provided by sections 2 to 23, inclusive, of this act; and

(c) Be recorded by the administrator in the office of the county recorder of the county where the real property is located, and indexed to show its relation to that real property.

3. If the administrator does not issue a certificate of completion after receiving the participant's certification that the work has been completed, he shall deliver to the participant, within 30 days after his receipt of the certificate, a written explanation of the reasons why the certificate was not issued.

Sec. 15. 1. Except as otherwise provided in section 16 of this act, the holder of a certificate of completion issued by the administrator is not a responsible party with respect to a release of a hazardous substance occurring on the property to which the certificate relates before the certificate was issued. The state may not maintain an action pursuant to federal law or NRS 459.537 to recover costs from the holder with respect to such a release.

2. The relief from liability provided by a certificate of completion remains effective despite a subsequent change in state or federal law.

Sec. 16. The holder of a certificate of completion is not released from liability:

1. If he obtained approval of his application, approval of his remedial agreement or issuance of the certificate by means of fraud, misrepresentation or a knowing failure to disclose material information;

2. If the existence of the hazardous substance on the property was not disclosed in his remedial agreement, whether or not he knew or should have known of its existence;

3. With respect to a release of a hazardous substance caused by him or his agent, unless the release is remedied before the certificate of completion is issued and is included in the certificate of completion;

4. In a criminal prosecution or an action for damage to a natural resource;

5. In an action for nuisance at common law, for trespass or for the conduct of an abnormally dangerous activity;

6. With respect to a use of the property for which the property is no longer suitable after the removal or remediation has been carried out, as identified pursuant to subparagraph (2) of paragraph (a) of subsection 2 of section 13 of this act; or

7. For a release of any hazardous substance not specified in the remedial agreement.

Sec. 17. 1. The relief from liability provided by section 15 of this act extends to another person who:

(a) Purchases or leases the property to which the certificate of completion relates; or

(b) Acquires, merges with or purchases substantially all of the assets of the holder of the certificate, after the certificate is issued, if the other person is not otherwise a responsible party. The other person is subject to any duties of the original holder of the certificate under the remedial agreement or the certificate.

2. The relief provided to a subsequent owner or lessee continues even if it is determined that the original holder of the certificate is not released from liability because of a provision of section 16 of this act if:

(a) The subsequent owner or lessee purchased or leased the property in good faith for its fair market value; and

(b) The actions of the original holder of the certificate cannot be attributed to the subsequent owner or lessee under a provision of law other than this chapter.

3. If the original holder of a certificate of completion is a prospective purchaser, the relief from liability provided by section 15 of this act extends to the person from whom he purchases the property if:

(a) The seller and purchaser so agree;

(b) The seller bears the expense of removal or remediation performed on the property, directly or indirectly;

(c) The seller is a responsible party only because of his ownership of the property; and

(d) The administrator approves the extension of relief and incorporates it into the certificate of completion.

Sec. 18. 1. A person who, without participating in the management of a parcel of real property, holds or is the beneficiary of evidence of title to the property primarily to protect a security interest in the property is not a responsible party with respect to a release of a hazardous substance on the property if:

(a) The owner of the property is relieved from liability under sections 2 to 23, inclusive, of this act with respect to the release;

(b) The owner or holder of evidence of title did not cause the release; and

(c) The owner or holder of evidence of title does not participate actively in decisions concerning hazardous substances on the property.

2. A lender to a prospective purchaser who has filed an application to participate in the program pursuant to section 12 of this act or a lender who forecloses his security interest in property pursuant to NRS 40.430 to 40.450, inclusive, or 107.080 to 107.100, inclusive, and within a reasonable period after the foreclosure, not to exceed 2 years, sells, transfers or conveys the property to a prospective purchaser who has filed an application to participate in the program pursuant to section 12 of this act is not a responsible party solely as a result of:

(a) Foreclosing a security interest in the property; or

(b) Making a loan to the prospective purchaser if the loan:

(1) Is to be used for acquiring property or removing or remediating hazardous substances on property; and

(2) Is secured by the property that is to be acquired or on which is located the hazardous substances that are to be removed or remediated.

Sec. 19. A prospective purchaser is not a responsible party solely as the result of:

1. Conducting an environmental assessment of real property;

2. Contracting to purchase, or acquiring an option to purchase, real property;

3. Applying to participate in a program; or

4. Conducting or supervising removal or remediation of a hazardous substance or substances, while exercising reasonable care, pursuant to an approved remedial agreement.

Sec. 20. 1. The holder of a certificate of completion may maintain an action against a responsible party to recover the holder's costs of performing removal or remediation of a hazardous substance or substances pursuant to a program.

2. If the holder is a prospective purchaser and his seller qualifies for relief from liability pursuant to section 17 of this act, the seller may maintain an action against a responsible party to recover the seller's costs of performing removal or remediation of a hazardous substance or substances pursuant to a program.

Sec. 21. 1. A participant may terminate his participation in a program upon 30 days' written notice to the administrator.

2. The administrator may terminate the participation of a participant in a program only if:

(a) The participant, after a reasonable period, has not proposed and is unlikely to be able to propose a remedial agreement that meets the requirements of section 13 of this act;

(b) The participant fails materially to comply with the requirements of the remedial agreement or sections 2 to 23, inclusive, of this act; or

(c) From information not known to the administrator when the remedial agreement was approved, he determines that the removal or remediation in progress or to be performed on the property poses an imminent and substantial threat of harm to human health or the environment.

3. *An application, remedial agreement or certificate of completion is not an admission of liability on the part of the applicant or participant, but a termination of participation does not otherwise affect the rights of the division.*

Sec. 22. 1. *A decision of the administrator to approve an application or a remedial agreement or to issue a certificate of completion is final and may not be reviewed.*

2. *If the administrator denies an application for any reason other than incompleteness, disapproves a proposed remedial agreement, does not issue a certificate of completion within the time allowed or terminates the participation of a participant in a program, the applicant or participant may apply to the commission to review the decision pursuant to chapter 233B of NRS.*

Sec. 22.5. *The commission shall adopt such regulations as the commission determines are necessary to carry out the provisions of sections 2 to 23, inclusive, of this act. Regulations adopted pursuant to this section:*

1. *Must include, without limitation, provisions relating to the:*

(a) *Duties and functions of consultants who are certified, or exempt from the requirement of certification, as provided by NRS 459.500;*

(b) *Financial capability and responsibility required of a participant; and*

(c) *Required form and content of and any fee required to be submitted with an application, certificate or remedial agreement.*

2. *May include, without limitation, provisions relating to the issuance of a temporary, interim or partial certificate of completion or progress with respect to a remedial agreement.*

Sec. 23. *The administrator shall make a good faith effort to negotiate with the Environmental Protection Agency to ensure that a certificate of completion issued pursuant to sections 2 to 23, inclusive, of this act will relieve a participant from liability to the United States to the same extent as those sections provide relief from liability to this state.*

Sec. 23.5. NRS 459.530 is hereby amended to read as follows:

459.530 1. All proceeds from agreements entered into pursuant to NRS 459.505, *all application fees collected pursuant to section 12 of this act*, all reimbursements and penalties recovered pursuant to NRS 459.537, and all fees collected, all civil penalties imposed and all interest accrued pursuant to NRS 459.400 to 459.600, inclusive, must be deposited with the state treasurer for credit to the account for the management of hazardous waste, which is hereby created in the state general fund. The money in the account must be paid as other claims against the state are paid.

2. The state treasurer shall account separately for each of the fees collected pursuant to NRS 459.512.

Sec. 24. NRS 459.537 is hereby amended to read as follows:

459.537 1. If the person responsible for a leak or spill of or an accident involving hazardous waste, hazardous material or a regulated

substance does not act promptly and appropriately to clean and decontaminate the affected area properly, and if his inaction presents an imminent and substantial hazard to human health, public safety or the environment, money from the account for the management of hazardous waste may be expended to pay the costs of:

- (a) Responding to the leak, spill or accident;
- (b) Coordinating the efforts of state, local and federal agencies responding to the leak, spill or accident;
- (c) Managing the cleaning and decontamination of an area for the disposal of hazardous waste or the site of the leak, spill or accident;
- (d) Removing or contracting for the removal of hazardous waste, hazardous material or a regulated substance which presents an imminent danger to human health, public safety or the environment; or
- (e) Services rendered in responding to the leak, spill or accident, by consultants certified pursuant to regulations adopted by the commission.

2. Except as otherwise provided in this subsection ~~H~~ **or sections 2 to 23, inclusive, of this act**, the director shall demand reimbursement of the account for money expended pursuant to subsection 1 from any person who is responsible for the accident, leak or spill, or who owns or controls the hazardous waste, hazardous material or a regulated substance, or the area used for the disposal of the waste, material or substance. Payment of the reimbursement is due within 60 days after the person receives notice from the director of the amount due. The provisions of this section do not apply to a spill or leak of or an accident involving natural gas or liquefied petroleum gas while it is under the responsibility of a public utility.

3. At the request of the director, the attorney general shall initiate recovery by legal action of the amount of any unpaid reimbursement plus interest at a rate determined pursuant to NRS 17.130 computed from the date of the incident.

4. As used in this section:

- (a) “Does not act promptly and appropriately” means that the person:
 - (1) Cannot be notified of the incident within 2 hours after the initial attempt to contact him;
 - (2) Does not, within 2 hours after receiving notification of the incident, make an oral or written commitment to clean and decontaminate the affected area properly;
 - (3) Does not act upon the commitment within 24 hours after making it;
 - (4) Does not clean and decontaminate the affected area properly; or
 - (5) Does not act immediately to clean and decontaminate the affected area properly, if his inaction presents an imminent and substantial hazard to human health, public safety or the environment.
- (b) “Responding” means any efforts to mitigate, attempt to mitigate or assist in the mitigation of the effects of a leak or spill of or an accident involving hazardous waste, hazardous material or a regulated substance, including, without limitation, efforts to:

(1) Contain and dispose of the hazardous waste, hazardous material or regulated substance.

(2) Clean and decontaminate the area affected by the leak, spill or accident.

(3) Investigate the occurrence of the leak, spill or accident.

Sec. 25. 1. This section and sections 1, 22.5 and 23 of this act become effective upon passage and approval.

2. Sections 2 to 22, inclusive, 23.5 and 24 of this act become effective on October 1, 1999.

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