
SENATE BILL 6041

State of Washington

57th Legislature

2001 Regular Session

By Senators Constantine and Patterson

Read first time 02/15/2001. Referred to Committee on Environment,
Energy & Water.

1 AN ACT Relating to hazardous substance deposits on lesser
2 contaminated sites; amending RCW 70.105D.020, 70.105D.050, and
3 70.105D.080; adding a new section to chapter 70.105D RCW; creating a
4 new section; prescribing penalties; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that each person
7 has a fundamental and inalienable right to a healthful environment and
8 each person has a responsibility to preserve and enhance that right.
9 The state has a solemn obligation to the present generation for the
10 benefit of future generations. The legislature finds a healthful
11 environment is threatened by irresponsible disposal of hazardous
12 substances from sites that have been cleaned up as required by law.

13 (2) The legislature finds that a deposit of hazardous substances on
14 real property that results in increasing the contamination level of
15 that property has potential significant adverse environmental impacts.
16 The legislature therefore intends to prohibit such deposits except in
17 limited circumstances, such as deposits on state-designated disposal
18 sites or on properties that are part of an approved county solid waste
19 plan. The legislature further intends to declare that, with these

1 limited exceptions, no hazardous substance may be deposited on real
2 property containing the hazardous substances to a lesser quantity and
3 degree than the hazardous substance being deposited.

4 **Sec. 2.** RCW 70.105D.020 and 1998 c 6 s 1 are each amended to read
5 as follows:

6 (1) "Agreed order" means an order issued by the department under
7 this chapter with which the potentially liable person receiving the
8 order agrees to comply. An agreed order may be used to require or
9 approve any cleanup or other remedial actions but it is not a
10 settlement under RCW 70.105D.040(4) and shall not contain a covenant
11 not to sue, or provide protection from claims for contribution, or
12 provide eligibility for public funding of remedial actions under RCW
13 70.105D.070(2)(d)(xi).

14 (2) "Department" means the department of ecology.

15 (3) "Director" means the director of ecology or the director's
16 designee.

17 (4) "Facility" means (a) any building, structure, installation,
18 equipment, pipe or pipeline (including any pipe into a sewer or
19 publicly owned treatment works), well, pit, pond, lagoon, impoundment,
20 ditch, landfill, storage container, motor vehicle, rolling stock,
21 vessel, or aircraft, or (b) any site or area where a hazardous
22 substance, other than a consumer product in consumer use, has been
23 deposited, stored, disposed of, or placed, or otherwise come to be
24 located.

25 (5) "Federal cleanup law" means the federal comprehensive
26 environmental response, compensation, and liability act of 1980, 42
27 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

28 (6) "Foreclosure and its equivalents" means purchase at a
29 foreclosure sale, acquisition, or assignment of title in lieu of
30 foreclosure, termination of a lease, or other repossession, acquisition
31 of a right to title or possession, an agreement in satisfaction of the
32 obligation, or any other comparable formal or informal manner, whether
33 pursuant to law or under warranties, covenants, conditions,
34 representations, or promises from the borrower, by which the holder
35 acquires title to or possession of a facility securing a loan or other
36 obligation.

37 (7) "Hazardous substance" means:

1 (a) Any dangerous or extremely hazardous waste as defined in RCW
2 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste
3 designated by rule pursuant to chapter 70.105 RCW;

4 (b) Any hazardous substance as defined in RCW 70.105.010(14) or any
5 hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

6 (c) Any substance that, on March 1, 1989, is a hazardous substance
7 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.
8 9601(14);

9 (d) Petroleum or petroleum products; and

10 (e) Any substance or category of substances, including solid waste
11 decomposition products, determined by the director by rule to present
12 a threat to human health or the environment if released into the
13 environment.

14 The term hazardous substance does not include any of the following
15 when contained in an underground storage tank from which there is not
16 a release: Crude oil or any fraction thereof or petroleum, if the tank
17 is in compliance with all applicable federal, state, and local law.

18 (8) "Independent remedial actions" means remedial actions conducted
19 without department oversight or approval, and not under an order,
20 agreed order, or consent decree.

21 (9) "Holder" means a person who holds indicia of ownership
22 primarily to protect a security interest. A holder includes the
23 initial holder such as the loan originator, any subsequent holder such
24 as a successor-in-interest or subsequent purchaser of the security
25 interest on the secondary market, a guarantor of an obligation, surety,
26 or any other person who holds indicia of ownership primarily to protect
27 a security interest, or a receiver, court-appointed trustee, or other
28 person who acts on behalf or for the benefit of a holder. A holder can
29 be a public or privately owned financial institution, receiver,
30 conservator, loan guarantor, or other similar persons that loan money
31 or guarantee repayment of a loan. Holders typically are banks or
32 savings and loan institutions but may also include others such as
33 insurance companies, pension funds, or private individuals that engage
34 in loaning of money or credit.

35 (10) "Indicia of ownership" means evidence of a security interest,
36 evidence of an interest in a security interest, or evidence of an
37 interest in a facility securing a loan or other obligation, including
38 any legal or equitable title to a facility acquired incident to
39 foreclosure and its equivalents. Evidence of such interests includes,

1 mortgages, deeds of trust, sellers interest in a real estate contract,
2 liens, surety bonds, and guarantees of obligations, title held pursuant
3 to a lease financing transaction in which the lessor does not select
4 initially the leased facility, or legal or equitable title obtained
5 pursuant to foreclosure and their equivalents. Evidence of such
6 interests also includes assignments, pledges, or other rights to or
7 other forms of encumbrance against the facility that are held primarily
8 to protect a security interest.

9 (11) "Operating a facility primarily to protect a security
10 interest" occurs when all of the following are met: (a) Operating the
11 facility where the borrower has defaulted on the loan or otherwise
12 breached the security agreement; (b) operating the facility to preserve
13 the value of the facility as an ongoing business; (c) the operation is
14 being done in anticipation of a sale, transfer, or assignment of the
15 facility; and (d) the operation is being done primarily to protect a
16 security interest. Operating a facility for longer than one year prior
17 to foreclosure or its equivalents shall be presumed to be operating the
18 facility for other than to protect a security interest.

19 (12) "Owner or operator" means:

20 (a) Any person with any ownership interest in the facility or who
21 exercises any control over the facility; or

22 (b) In the case of an abandoned facility, any person who had owned,
23 or operated, or exercised control over the facility any time before its
24 abandonment;

25 The term does not include:

26 (i) An agency of the state or unit of local government which
27 acquired ownership or control involuntarily through bankruptcy, tax
28 delinquency, abandonment, or circumstances in which the government
29 involuntarily acquires title. This exclusion does not apply to an
30 agency of the state or unit of local government which has caused or
31 contributed to the release or threatened release of a hazardous
32 substance from the facility;

33 (ii) A person who, without participating in the management of a
34 facility, holds indicia of ownership primarily to protect the person's
35 security interest in the facility. Holders after foreclosure and its
36 equivalent and holders who engage in any of the activities identified
37 in subsection (13)(e) through (g) of this section shall not lose this
38 exemption provided the holder complies with all of the following:

1 (A) The holder properly maintains the environmental compliance
2 measures already in place at the facility;

3 (B) The holder complies with the reporting requirements in the
4 rules adopted under this chapter;

5 (C) The holder complies with any order issued to the holder by the
6 department to abate an imminent or substantial endangerment;

7 (D) The holder allows the department or potentially liable persons
8 under an order, agreed order, or settlement agreement under this
9 chapter access to the facility to conduct remedial actions and does not
10 impede the conduct of such remedial actions;

11 (E) Any remedial actions conducted by the holder are in compliance
12 with any preexisting requirements identified by the department, or, if
13 the department has not identified such requirements for the facility,
14 the remedial actions are conducted consistent with the rules adopted
15 under this chapter; and

16 (F) The holder does not exacerbate an existing release. The
17 exemption in this subsection (12)(b)(ii) does not apply to holders who
18 cause or contribute to a new release or threatened release or who are
19 otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e);
20 provided, however, that a holder shall not lose this exemption if it
21 establishes that any such new release has been remediated according to
22 the requirements of this chapter and that any hazardous substances
23 remaining at the facility after remediation of the new release are
24 divisible from such new release;

25 (iii) A fiduciary in his, her, or its personal or individual
26 capacity. This exemption does not preclude a claim against the assets
27 of the estate or trust administered by the fiduciary or against a
28 nonemployee agent or independent contractor retained by a fiduciary.
29 This exemption also does not apply to the extent that a person is
30 liable under this chapter independently of the person's ownership as a
31 fiduciary or for actions taken in a fiduciary capacity which cause or
32 contribute to a new release or exacerbate an existing release of
33 hazardous substances. This exemption applies provided that, to the
34 extent of the fiduciary's powers granted by law or by the applicable
35 governing instrument granting fiduciary powers, the fiduciary complies
36 with all of the following:

37 (A) The fiduciary properly maintains the environmental compliance
38 measures already in place at the facility;

1 (B) The fiduciary complies with the reporting requirements in the
2 rules adopted under this chapter;

3 (C) The fiduciary complies with any order issued to the fiduciary
4 by the department to abate an imminent or substantial endangerment;

5 (D) The fiduciary allows the department or potentially liable
6 persons under an order, agreed order, or settlement agreement under
7 this chapter access to the facility to conduct remedial actions and
8 does not impede the conduct of such remedial actions;

9 (E) Any remedial actions conducted by the fiduciary are in
10 compliance with any preexisting requirements identified by the
11 department, or, if the department has not identified such requirements
12 for the facility, the remedial actions are conducted consistent with
13 the rules adopted under this chapter; and

14 (F) The fiduciary does not exacerbate an existing release.

15 The exemption in this subsection (12)(b)(iii) does not apply to
16 fiduciaries who cause or contribute to a new release or threatened
17 release or who are otherwise liable under RCW 70.105D.040(1) (b), (c),
18 (d), and (e); provided however, that a fiduciary shall not lose this
19 exemption if it establishes that any such new release has been
20 remediated according to the requirements of this chapter and that any
21 hazardous substances remaining at the facility after remediation of the
22 new release are divisible from such new release. The exemption in this
23 subsection (12)(b)(iii) also does not apply where the fiduciary's
24 powers to comply with this subsection (12)(b)(iii) are limited by a
25 governing instrument created with the objective purpose of avoiding
26 liability under this chapter or of avoiding compliance with this
27 chapter; or

28 (iv) Any person who has any ownership interest in, operates, or
29 exercises control over real property where a hazardous substance has
30 come to be located solely as a result of migration of the hazardous
31 substance to the real property through the ground water from a source
32 off the property, if:

33 (A) The person can demonstrate that the hazardous substance has not
34 been used, placed, managed, or otherwise handled on the property in a
35 manner likely to cause or contribute to a release of the hazardous
36 substance that has migrated onto the property;

37 (B) The person has not caused or contributed to the release of the
38 hazardous substance;

1 (C) The person does not engage in activities that damage or
2 interfere with the operation of remedial actions installed on the
3 person's property or engage in activities that result in exposure of
4 humans or the environment to the contaminated ground water that has
5 migrated onto the property;

6 (D) If requested, the person allows the department, potentially
7 liable persons who are subject to an order, agreed order, or consent
8 decree, and the authorized employees, agents, or contractors of each,
9 access to the property to conduct remedial actions required by the
10 department. The person may attempt to negotiate an access agreement
11 before allowing access; and

12 (E) Legal withdrawal of ground water does not disqualify a person
13 from the exemption in this subsection (12)(b)(iv).

14 (13) "Participation in management" means exercising decision-making
15 control over the borrower's operation of the facility, environmental
16 compliance, or assuming or manifesting responsibility for the overall
17 management of the enterprise encompassing the day-to-day decision
18 making of the enterprise.

19 The term does not include any of the following: (a) A holder with
20 the mere capacity or ability to influence, or the unexercised right to
21 control facility operations; (b) a holder who conducts or requires a
22 borrower to conduct an environmental audit or an environmental site
23 assessment at the facility for which indicia of ownership is held; (c)
24 a holder who requires a borrower to come into compliance with any
25 applicable laws or regulations at the facility for which indicia of
26 ownership is held; (d) a holder who requires a borrower to conduct
27 remedial actions including setting minimum requirements, but does not
28 otherwise control or manage the borrower's remedial actions or the
29 scope of the borrower's remedial actions except to prepare a facility
30 for sale, transfer, or assignment; (e) a holder who engages in workout
31 or policing activities primarily to protect the holder's security
32 interest in the facility; (f) a holder who prepares a facility for
33 sale, transfer, or assignment or requires a borrower to prepare a
34 facility for sale, transfer, or assignment; (g) a holder who operates
35 a facility primarily to protect a security interest, or requires a
36 borrower to continue to operate, a facility primarily to protect a
37 security interest; and (h) a prospective holder who, as a condition of
38 becoming a holder, requires an owner or operator to conduct an
39 environmental audit, conduct an environmental site assessment, come

1 into compliance with any applicable laws or regulations, or conduct
2 remedial actions prior to holding a security interest is not
3 participating in the management of the facility.

4 (14) "Person" means an individual, firm, corporation, association,
5 partnership, consortium, joint venture, commercial entity, state
6 government agency, unit of local government, federal government agency,
7 ~~((or))~~ Indian tribe, special district, port district, or any other
8 entity established under law.

9 (15) "Policing activities" means actions the holder takes to insure
10 that the borrower complies with the terms of the loan or security
11 interest or actions the holder takes or requires the borrower to take
12 to maintain the value of the security. Policing activities include:
13 Requiring the borrower to conduct remedial actions at the facility
14 during the term of the security interest; requiring the borrower to
15 comply or come into compliance with applicable federal, state, and
16 local environmental and other laws, regulations, and permits during the
17 term of the security interest; securing or exercising authority to
18 monitor or inspect the facility including on-site inspections, or to
19 monitor or inspect the borrower's business or financial condition
20 during the term of the security interest; or taking other actions
21 necessary to adequately police the loan or security interest such as
22 requiring a borrower to comply with any warranties, covenants,
23 conditions, representations, or promises from the borrower.

24 (16) "Potentially liable person" means any person whom the
25 department finds, based on credible evidence, to be liable under RCW
26 70.105D.040. The department shall give notice to any such person and
27 allow an opportunity for comment before making the finding, unless an
28 emergency requires otherwise.

29 (17) "Prepare a facility for sale, transfer, or assignment" means
30 to secure access to the facility; perform routine maintenance on the
31 facility; remove inventory, equipment, or structures; properly maintain
32 environmental compliance measures already in place at the facility;
33 conduct remedial actions to clean up releases at the facility; or to
34 perform other similar activities intended to preserve the value of the
35 facility where the borrower has defaulted on the loan or otherwise
36 breached the security agreement or after foreclosure and its
37 equivalents and in anticipation of a pending sale, transfer, or
38 assignment, primarily to protect the holder's security interest in the
39 facility. A holder can prepare a facility for sale, transfer, or

1 assignment for up to one year prior to foreclosure and its equivalents
2 and still stay within the security interest exemption in subsection
3 (12)(b)(ii) of this section.

4 (18) "Primarily to protect a security interest" means the indicia
5 of ownership is held primarily for the purpose of securing payment or
6 performance of an obligation. The term does not include indicia of
7 ownership held primarily for investment purposes nor indicia of
8 ownership held primarily for purposes other than as protection for a
9 security interest. A holder may have other, secondary reasons, for
10 maintaining indicia of ownership, but the primary reason must be for
11 protection of a security interest. Holding indicia of ownership after
12 foreclosure or its equivalents for longer than five years shall be
13 considered to be holding the indicia of ownership for purposes other
14 than primarily to protect a security interest. For facilities that
15 have been acquired through foreclosure or its equivalents prior to July
16 23, 1995, this five-year period shall begin as of July 23, 1995.

17 (19) "Public notice" means, at a minimum, adequate notice mailed to
18 all persons who have made timely request of the department and to
19 persons residing in the potentially affected vicinity of the proposed
20 action; mailed to appropriate news media; published in the newspaper of
21 largest circulation in the city or county of the proposed action; and
22 opportunity for interested persons to comment.

23 (20) "Release" means any intentional or unintentional entry of any
24 hazardous substance into the environment, including but not limited to
25 the abandonment or disposal of containers of hazardous substances.

26 (21) "Remedy" or "remedial action" means any action or expenditure
27 consistent with the purposes of this chapter to identify, eliminate, or
28 minimize any threat or potential threat posed by hazardous substances
29 to human health or the environment including any investigative and
30 monitoring activities with respect to any release or threatened release
31 of a hazardous substance and any health assessments or health effects
32 studies conducted in order to determine the risk or potential risk to
33 human health.

34 (22) "Security interest" means an interest in a facility created or
35 established for the purpose of securing a loan or other obligation.
36 Security interests include deeds of trusts, sellers interest in a real
37 estate contract, liens, legal, or equitable title to a facility
38 acquired incident to foreclosure and its equivalents, and title
39 pursuant to lease financing transactions. Security interests may also

1 arise from transactions such as sale and leasebacks, conditional sales,
2 installment sales, trust receipt transactions, certain assignments,
3 factoring agreements, accounts receivable financing arrangements,
4 easements, and consignments, if the transaction creates or establishes
5 an interest in a facility for the purpose of securing a loan or other
6 obligation.

7 (23) "Industrial properties" means properties that are or have been
8 characterized by, or are to be committed to, traditional industrial
9 uses such as processing or manufacturing of materials, marine terminal
10 and transportation areas and facilities, fabrication, assembly,
11 treatment, or distribution of manufactured products, or storage of bulk
12 materials, that are either:

13 (a) Zoned for industrial use by a city or county conducting land
14 use planning under chapter 36.70A RCW; or

15 (b) For counties not planning under chapter 36.70A RCW and the
16 cities within them, zoned for industrial use and adjacent to properties
17 currently used or designated for industrial purposes.

18 (24) "Workout activities" means those actions by which a holder, at
19 any time prior to foreclosure and its equivalents, seeks to prevent,
20 cure, or mitigate a default by the borrower or obligor; or to preserve,
21 or prevent the diminution of, the value of the security. Workout
22 activities include: Restructuring or renegotiating the terms of the
23 security interest; requiring payment of additional rent or interest;
24 exercising forbearance; requiring or exercising rights pursuant to an
25 assignment of accounts or other amounts owed to an obligor; requiring
26 or exercising rights pursuant to an escrow agreement pertaining to
27 amounts owed to an obligor; providing specific or general financial or
28 other advice, suggestions, counseling, or guidance; and exercising any
29 right or remedy the holder is entitled to by law or under any
30 warranties, covenants, conditions, representations, or promises from
31 the borrower.

32 (25)(a) "Fiduciary" means a person acting for the benefit of
33 another party as a bona fide trustee; executor; administrator;
34 custodian; guardian of estates or guardian ad litem; receiver;
35 conservator; committee of estates of incapacitated persons; trustee in
36 bankruptcy; trustee, under an indenture agreement, trust agreement,
37 lease, or similar financing agreement, for debt securities,
38 certificates of interest or certificates of participation in debt
39 securities, or other forms of indebtedness as to which the trustee is

1 not, in the capacity of trustee, the lender. Except as provided in
2 subsection (12)(b)(iii) of this section, the liability of a fiduciary
3 under this chapter shall not exceed the assets held in the fiduciary
4 capacity.

5 (b) "Fiduciary" does not mean:

6 (i) A person acting as a fiduciary with respect to a trust or other
7 fiduciary estate that was organized for the primary purpose of, or is
8 engaged in, actively carrying on a trade or business for profit, unless
9 the trust or other fiduciary estate was created as part of, or to
10 facilitate, one or more estate plans or because of the incapacity of a
11 natural person;

12 (ii) A person who acquires ownership or control of a facility with
13 the objective purpose of avoiding liability of the person or any other
14 person. It is prima facie evidence that the fiduciary acquired
15 ownership or control of the facility to avoid liability if the facility
16 is the only substantial asset in the fiduciary estate at the time the
17 facility became subject to the fiduciary estate;

18 (iii) A person who acts in a capacity other than that of a
19 fiduciary or in a beneficiary capacity and in that capacity directly or
20 indirectly benefits from a trust or fiduciary relationship;

21 (iv) A person who is a beneficiary and fiduciary with respect to
22 the same fiduciary estate, and who while acting as a fiduciary receives
23 benefits that exceed customary or reasonable compensation, and
24 incidental benefits permitted under applicable law;

25 (v) A person who is a fiduciary and receives benefits that
26 substantially exceed customary or reasonable compensation, and
27 incidental benefits permitted under applicable law; or

28 (vi) A person who acts in the capacity of trustee of state or
29 federal lands or resources.

30 (26) "Fiduciary capacity" means the capacity of a person holding
31 title to a facility, or otherwise having control of an interest in the
32 facility pursuant to the exercise of the responsibilities of the person
33 as a fiduciary.

34 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.105D
35 RCW to read as follows:

36 No hazardous substance that has been removed from a facility may be
37 deposited on real property that contains hazardous substances to a

1 lesser quantity and degree than the hazardous substance being deposited
2 on the property. This section does not apply to:

3 (1) Actions taken in accordance with a settlement authorized in RCW
4 70.105D.040(5); or

5 (2) Deposits on a disposal site or landfill as defined in RCW
6 70.95.030 and deposits at facilities for the recycling, storage,
7 treatment, incineration, or disposal of hazardous wastes as defined in
8 RCW 70.105.010(11) and 70.95.010(15).

9 **Sec. 4.** RCW 70.105D.050 and 1994 c 257 s 12 are each amended to
10 read as follows:

11 (1) With respect to any release, or threatened release, for which
12 the department does not conduct or contract for conducting remedial
13 action and for which the department believes remedial action is in the
14 public interest, the director shall issue orders or agreed orders
15 requiring potentially liable persons to provide the remedial action.

16 (2) Any liable person who refuses, without sufficient cause, to
17 comply with an order or agreed order of the director or who violates
18 section 3 of this act is liable in an action brought by the attorney
19 general for:

20 (a) Up to three times the amount of any costs incurred by the state
21 as a result of the party's refusal to comply or as a result of the
22 violation of section 3 of this act; and

23 (b) A civil penalty of up to twenty-five thousand dollars for each
24 day the party refuses to comply or up to twenty-five thousand dollars
25 for each violation of section 3 of this act.

26 (3) The treble damages and civil penalty under ~~((this))~~ subsection
27 (2) of this section apply to all recovery actions filed on or after
28 March 1, 1989, and to all violations of section 3 of this act occurring
29 on or after the effective date of this section.

30 ~~((+2))~~ (4) Any person who incurs costs complying with an order
31 issued under subsection ~~((+1))~~ (2) of this section may petition the
32 department for reimbursement of those costs. If the department refuses
33 to grant reimbursement, the person may within thirty days thereafter
34 file suit and recover costs by proving that he or she was not a liable
35 person under RCW 70.105D.040 and that the costs incurred were
36 reasonable.

37 ~~((+3))~~ (5) The attorney general shall seek, by filing an action if
38 necessary, to recover the amounts spent by the department for

1 investigative and remedial actions and orders, and agreed orders,
2 including amounts spent prior to March 1, 1989, and for investigations
3 and other actions taken regarding violations of section 3 of this act.

4 ((+4)) (6) The attorney general may bring an action to secure such
5 relief as is necessary to protect human health and the environment
6 under this chapter.

7 ((+5)) (7)(a) Any person may commence a civil action to compel the
8 department to perform any nondiscretionary duty under this chapter. At
9 least thirty days before commencing the action, the person must give
10 notice of intent to sue, unless a substantial endangerment exists. The
11 court may award attorneys' fees and other costs to the prevailing party
12 in the action.

13 (b) Civil actions under this section and RCW 70.105D.060 may be
14 brought in the superior court of Thurston county or of the county in
15 which the release or threatened release exists.

16 **Sec. 5.** RCW 70.105D.080 and 1997 c 406 s 6 are each amended to
17 read as follows:

18 (1) Except as provided in RCW 70.105D.040(4) (d) and (f), a person
19 may bring a private right of action, including a claim for contribution
20 or for injunctive or declaratory relief, against any other person
21 liable under RCW 70.105D.040 for the recovery of remedial action costs
22 or for violations of section 3 of this act. In the action, natural
23 resource damages paid to the state under this chapter may also be
24 recovered. Recovery shall be based on such equitable factors as the
25 court determines are appropriate. Remedial action costs and damages or
26 other remedies for violations of section 3 of this act shall include
27 reasonable attorneys' fees and expenses.

28 (2) Recovery of remedial action costs shall be limited to those
29 remedial actions that, when evaluated as a whole, are the substantial
30 equivalent of a department-conducted or department-supervised remedial
31 action. Substantial equivalence shall be determined by the court with
32 reference to the rules adopted by the department under this chapter.
33 An action under this section may be brought after remedial action costs
34 are incurred but must be brought within three years from the date
35 remedial action confirms cleanup standards are met or within one year
36 of May 12, 1993, whichever is later.

37 (3) The prevailing party in ((such)) an action brought under this
38 section shall recover its reasonable attorneys' fees and costs. This

1 section applies to all causes of action regardless of when the cause of
2 action may have arisen. To the extent a cause of action has arisen
3 prior to May 12, 1993, this section applies retroactively, but in all
4 other respects it applies prospectively.

5 NEW SECTION. **Sec. 6.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of the
11 state government and its existing public institutions, and takes effect
12 immediately.

--- END ---