

# STATE OF NEW YORK

2536

2019-2020 Regular Sessions

## IN SENATE

January 28, 2019

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the recovery of costs for the response costs and damages to natural resources as a result of the illegal disposal of waste

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The environmental conservation law is amended by adding a  
2 new section 27-0111 to read as follows:

3 § 27-0111. Illegal disposal cost recovery.

4 A person who is responsible for the illegal disposal of waste as  
5 defined in section 27-1301 of this article, or causes a release or a  
6 substantial threat of release of a contaminant which presents a substan-  
7 tial danger to the public health or safety or the environment, shall be  
8 liable for the response costs and for damages to natural resources. The  
9 department, a state agency, or a municipality which undertakes to abate  
10 a public nuisance under this title or take a response action may recover  
11 such response costs and natural resource damages in an action in equity  
12 brought before a court of competent jurisdiction.

13 § 2. Subdivision 5 of section 27-1313 of the environmental conserva-  
14 tion law, as amended by chapter 857 of the laws of 1982, paragraph g as  
15 amended by chapter 164 of the laws of 1990, is amended to read as  
16 follows:

17 5. a. Whenever a person ordered to eliminate a threat to the environ-  
18 ment pursuant to paragraph a of subdivision three of this section has  
19 failed to do so within the time limits specified in the order, the  
20 department may develop and implement an inactive hazardous waste  
21 disposal site remedial program for such site. The reasonable expenses of  
22 developing and implementing such remedial program by the department  
23 shall be paid by the person to whom the order was issued and the state

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD08652-01-9

1 may seek to recover such reasonable expenses in any court of appropriate  
2 jurisdiction.

3 b. Any expenditures made by the department pursuant to this title  
4 shall constitute, in each instance, a debt of the person who is respon-  
5 sible for the disposal of hazardous waste to the state. The debt shall  
6 constitute a lien on all property owned by the person who is responsible  
7 for the disposal of hazardous waste when a notice of lien, incorporating  
8 a description of the property of the person who is responsible for the  
9 disposal of hazardous waste subject to the cleanup and removal and an  
10 identification of the amount of cleanup, removal and related costs  
11 expended by the state, is duly filed in the clerk's office of the county  
12 where the property is situated. The clerk shall promptly enter upon the  
13 civil judgment or order docket the name and address of the person who is  
14 responsible for the disposal of hazardous waste and the amount of the  
15 lien as set forth in the notice of lien. Upon entry by the clerk, the  
16 lien, to the amount committed by the department for cleanup and removal,  
17 shall attach to the revenues and all real and personal property of the  
18 person who is responsible for the disposal of hazardous waste, whether  
19 or not the person who is responsible for the disposal of hazardous waste  
20 is insolvent. The notice of lien filed pursuant to this subdivision  
21 which affects any property of a person who is responsible for the  
22 disposal of hazardous waste shall not affect any valid lien, right, or  
23 interest in the property filed in accordance with established procedure  
24 prior to the filing of a notice of lien pursuant to this subdivision.

25 c. In the event that the commissioner has found that hazardous wastes  
26 at a site constitute a significant threat to the environment, but after  
27 a reasonable attempt to determine who may be responsible is either  
28 unable to determine who may be responsible, or is unable to locate a  
29 person who may be responsible, the department may develop and implement  
30 an inactive hazardous waste disposal site remedial program for such  
31 site. The commissioner shall make every effort, in accordance with the  
32 requirements for notice, hearing and review provided for in this title,  
33 to secure appropriate relief from any person subsequently identified or  
34 located who is responsible for the disposal of hazardous waste at such  
35 site, including, but not limited to, development and implementation of  
36 an inactive hazardous waste disposal site remedial program, payment of  
37 the cost of such a program, recovery of any reasonable expenses incurred  
38 by the state, money damages and penalties.

39 ~~[e-]~~ d. Whenever the commissioner has made findings pursuant to para-  
40 graph b of subdivision three of this section or the commissioner of  
41 health has made a declaration and finding pursuant to paragraph (b) of  
42 subdivision three of section one thousand three hundred eighty-nine-b of  
43 the public health law, the department may develop and implement an inac-  
44 tive hazardous waste disposal site remedial program to contain, allevi-  
45 ate or end the threat to life or health or to the environment. The costs  
46 incurred by the department in developing and implementing such a program  
47 shall be in an amount commensurate with the actions the department deems  
48 necessary to eliminate such danger. In determining the scope, nature and  
49 content of such program, the department shall consider among others, the  
50 following factors:

- 51 (i) the technological feasibility of all actions;
- 52 (ii) the nature of the danger to human health and the environment  
53 which the actions are designed to address; and
- 54 (iii) the extent to which the actions would reduce such danger to  
55 human health or the environment or would otherwise benefit human health  
56 or the environment.

1     ~~[d.]~~ e. Notwithstanding the provisions of ~~[subdivision e]~~ paragraph d  
2 of this ~~[section]~~ subdivision, the department shall be authorized to  
3 develop and implement an inactive hazardous waste disposal site remedial  
4 program at the site pursuant to this subdivision if, in the discretion  
5 of the department, it is cost-effective for the department to develop  
6 and implement such a remedial program. The goal of any such remedial  
7 program shall be a complete cleanup of the site through the elimination  
8 of the significant threat to the environment posed by the disposal of  
9 hazardous wastes at the site and of the imminent danger of irreversible  
10 or irreparable damage to the environment caused by such disposal. The  
11 factors to be considered by the department in determining whether it is  
12 cost-effective to develop and implement an inactive hazardous waste  
13 disposal site remedial program at a site pursuant to this subdivision  
14 shall include, among others:

15     (i) the ability of the department to determine, through the exercise  
16 of its scientific judgment, whether the elimination of the imminent  
17 danger of irreversible or irreparable damage to the environment can be  
18 achieved through limited actions;

19     (ii) the ability of the department to identify the owner of the site  
20 and/or any person responsible for the disposal of hazardous wastes at  
21 such site with sufficient financial resources to develop and implement  
22 an inactive hazardous waste disposal site remedial program at such site;

23     (iii) the nature of the danger to human health and the environment  
24 which the actions are designed to address; and

25     (iv) the extent to which the actions would reduce such danger to human  
26 health or the environment or would otherwise benefit human health or the  
27 environment.

28     ~~[e.]~~ f. Whenever the commissioner of health makes a declaration and  
29 finding pursuant to paragraph ~~[b]~~ (b) of subdivision three of section  
30 one thousand three hundred eighty-nine-b of the public health law, the  
31 department may implement an inactive hazardous waste site remedial  
32 program in the same manner as specified in paragraphs ~~[e-and]~~ d and e of  
33 this subdivision.

34     ~~[f.]~~ g. The commissioner shall make every effort, in accordance with  
35 the requirements for notice, hearing and review provided for in this  
36 title to secure appropriate relief from the owner or operator of such  
37 site and/or any person responsible for the disposal of hazardous wastes  
38 at such site, including, but not limited to, development and implementa-  
39 tion of an inactive hazardous waste disposal site remedial program,  
40 payment of the cost of such program, recovery of any reasonable expenses  
41 incurred by the state, money damages and penalties.

42     ~~[g.]~~ h. When a municipality develops and implements pursuant to an  
43 agreement with the department an inactive hazardous waste disposal site  
44 remedial program as approved by the department for a site which is owned  
45 or has been operated by such municipality or when the department, pursu-  
46 ant to an agreement with a municipality, develops and implements such a  
47 remedial program, the commissioner shall, in the name of the state,  
48 agree in such agreement to provide from the hazardous waste remedial  
49 fund, within the limitations of appropriations therefor, seventy-five  
50 percent of the eligible design and construction costs of such remedial  
51 program for which such municipality is liable solely because of its  
52 ownership and/or operation of such site and which are not recovered from  
53 or reimbursed or paid by a responsible party or the federal government.

54     § 3. Subdivision 1 of section 71-2705 of the environmental conserva-  
55 tion law, as amended by section 30 of part C of chapter 62 of the laws  
56 of 2003, is amended to read as follows:

1 1. Civil and administrative sanctions. Any person who violates any of  
2 the provisions of, or who fails to perform any duty imposed by titles 9,  
3 11 and 13 of article 27 or any rule or regulation promulgated pursuant  
4 thereto, or any term or condition of any certificate or permit issued  
5 pursuant thereto, or any final determination or order of the commission-  
6 er made pursuant to this title shall be liable in the case of a first  
7 violation, for a civil penalty not to exceed thirty-seven thousand five  
8 hundred dollars and an additional penalty of not more than thirty-seven  
9 thousand five hundred dollars for each day during which such violation  
10 continues or treble damages in cases where the department has issued an  
11 order pursuant to title 9, 11, or 13 of article 27 to a person liable  
12 pursuant to this section and such person has unreasonably or in bad  
13 faith failed or refused to comply with such order, to be assessed by the  
14 commissioner after an opportunity to be heard pursuant to the provisions  
15 of section 71-1709 of this article, or by the court in any action or  
16 proceeding pursuant to section 71-2727 of this title, and, in addition  
17 thereto, such person may by similar process be enjoined from continuing  
18 such violation and any permit or certificate issued to such person may  
19 be revoked or suspended or a pending renewal application denied. In the  
20 case of a second and any further violation, the liability shall be for a  
21 civil penalty not to exceed seventy-five thousand dollars for each such  
22 violation and an additional penalty not to exceed seventy-five thousand  
23 dollars for each day during which such violation continues or five times  
24 the damages in cases where the department has issued an order pursuant  
25 to title 9, 11, or 13 of article 27 to a person liable pursuant to this  
26 section and such person has unreasonably or in bad faith failed or  
27 refused to comply with such order.

28 § 4. This act shall take effect immediately.