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:

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

§ 27-0111. Illegal disposal cost recovery.

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

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

5. a. Whenever a person ordered to eliminate a threat to the environment pursuant to paragraph a of subdivision three of this section has failed to do so within the time limits specified in the order, the department may develop and implement an inactive hazardous waste disposal site remedial program for such site. The reasonable expenses of developing and implementing such remedial program by the department 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.

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

b. Any expenditures made by the department pursuant to this title shall constitute, in each instance, a debt of the person who is responsible for the disposal of hazardous waste to the state. The debt shall constitute a lien on all property owned by the person who is responsible for the disposal of hazardous waste when a notice of lien, incorporating a description of the property of the person who is responsible for the disposal of hazardous waste subject to the cleanup and removal and an identification of the amount of cleanup, removal and related costs expended by the state, is duly filed in the clerk's office of the county where the property is situated. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the person who is responsible for the disposal of hazardous waste and the amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien, to the amount committed by the department for cleanup and removal, shall attach to the revenues and all real and personal property of the person who is responsible for the disposal of hazardous waste, whether or not the person who is responsible for the disposal of hazardous waste is insolvent. The notice of lien filed pursuant to this subdivision which affects any property of a person who is responsible for the disposal of hazardous waste shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this subdivision.

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

[~~c.~~] d. Whenever the commissioner has made findings pursuant to paragraph b of subdivision three of this section or the commissioner of health has made a declaration and finding pursuant to paragraph (b) of subdivision three of section one thousand three hundred eighty-nine-b of the public health law, the department may develop and implement an inactive hazardous waste disposal site remedial program to contain, alleviate or end the threat to life or health or to the environment. The costs incurred by the department in developing and implementing such a program shall be in an amount commensurate with the actions the department deems necessary to eliminate such danger. In determining the scope, nature and content of such program, the department shall consider among others, the following factors:

(i) the technological feasibility of all actions;

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

(iii) the extent to which the actions would reduce such danger to human health or the environment or would otherwise benefit human health or the environment.

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

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

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

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

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

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

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

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

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

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

§ 4. This act shall take effect immediately.