

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.

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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.