

FIRST REGULAR SESSION

SENATE BILL NO. 462

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time February 24, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2128S.011

AN ACT

To repeal sections 260.500 and 260.546, RSMo, and to enact in lieu thereof two new sections relating to hazardous substance releases.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 260.500 and 260.546, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 260.500 and 260.546, to read as follows:

260.500. As used in sections 260.500 to 260.550, unless the context clearly indicates otherwise, the following terms mean:

- (1) "Cleanup", all actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance;
- (2) "Cleanup costs", all costs incurred by the state or any of its political subdivisions, or their agents, or by any other person participating with the approval of the department of natural resources in the prevention or mitigation of damages from a hazardous substance emergency or the cleanup of a hazardous substance involved in a hazardous substance emergency, including a proportionate share of those costs necessary to maintain the services authorized in sections 260.500 to 260.550;
- (3) "Department", the department of natural resources;
- (4) "Director", the director of the department of natural resources;
- (5) "Hazardous substance", any substance or mixture of substances that presents a danger to the public health or safety or the environment and includes:
 - (a) Any hazardous waste identified or listed by the department pursuant to sections 260.350 to 260.430;
 - (b) Any element, compound, mixture, solution, or substance designated

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 pursuant to Sections 101(14) and 102 of the Comprehensive Environmental
20 Response, Compensation and Liability Act of 1980, as amended, and Section 302
21 of the Superfund Amendments and Reauthorization Act of 1986, as amended; and

22 (c) Any hazardous material designated by the Secretary of the United
23 States Department of Transportation pursuant to the Hazardous Materials
24 Transportation Act;

25 (d) "Hazardous substances" does not include radioactive materials, wastes,
26 emissions or discharges that are licensed or regulated by laws of the federal
27 government or of this state. However, such material released due to a
28 transportation accident shall be considered a hazardous substance;

29 (6) "Hazardous substance emergency":

30 (a) Any release of hazardous substances in quantities equal to or in excess
31 of those determined pursuant to Section 101(14) or 102 of the Comprehensive
32 Environmental Response, Compensation and Liability Act of 1980, as amended,
33 and Section 304 of the Superfund Amendments and Reauthorization Act of 1986,
34 as amended;

35 (b) Any release of petroleum [including crude oil or any fraction thereof],
36 natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for
37 fuel (or mixtures of natural gas and such synthetic gas) in excess of [fifty] **three**
38 **thousand** gallons for liquids or three hundred cubic feet for gases, except that
39 the notification and reporting of any release of natural gas or natural gas
40 mixtures by or from intrastate facilities, regardless of the quantity of such
41 release, shall be as specified by the public service commission rather than
42 pursuant to the notification and reporting requirements contained in, or
43 authorized by, sections 260.500 to 260.550. Interstate natural gas pipeline
44 facilities shall report natural gas releases to the state and the National Response
45 Center in accordance with federal Department of Transportation regulatory
46 requirements;

47 (c) Any release of a hazardous waste which is reportable pursuant to
48 sections 260.350 to 260.430;

49 (d) Any release of a hazardous substance which requires immediate notice
50 pursuant to Part 171 of Title 49 of the Code of Federal Regulations;

51 (e) The department may promulgate rules and regulations identifying the
52 substances and the quantities thereof which, if released, constitute a hazardous
53 substance emergency;

54 (7) "Person", any individual, partnership, copartnership, firm, company,

55 public or private corporation, association, joint stock company, trust, estate,
56 political subdivision, or any agency, board, department, or bureau of the state or
57 federal government, or any other legal entity whatever which is recognized by law
58 as the subject of rights and duties;

59 (8) "Person having control over a hazardous substance", any person
60 producing, handling, storing, transporting, refining, or disposing of a hazardous
61 substance when a hazardous substance emergency occurs, including bailees,
62 carriers, and any other person in control of a hazardous substance when a
63 hazardous substance emergency occurs, whether they own the hazardous
64 substance or are operating under a lease, contract, or other agreement with the
65 legal owner thereof;

66 (9) "Release", any threatened or real emission, discharge, spillage,
67 leakage, pumping, pouring, emptying or dumping of a substance into or onto the
68 land, air or waters of the state unless done in compliance with the conditions of
69 a federal or state permit, unless the substance is confined and is expected to stay
70 confined to property owned, leased or otherwise controlled by the person having
71 control over the substance, or unless, in the case of pesticides, if application is
72 done in accordance with the product label;

73 (10) "State of Missouri basic emergency operations plan", the state plan,
74 its annexes, and appendices as developed or maintained by the state emergency
75 management agency for response to natural and man-made disasters in this state;

76 (11) "Waters of the state", all rivers, streams, lakes and other bodies of
77 surface and subsurface water lying within or forming a part of the boundaries of
78 the state which are not entirely confined and located completely upon lands
79 owned, leased or otherwise controlled by a single person or by two or more
80 persons jointly or as tenants in common and includes waters of the United States
81 lying within the state.

260.546. 1. In the event that a hazardous substance release occurs for
2 which a political subdivision or volunteer fire protection association as defined
3 in section 320.300, RSMo, provides emergency services, the person having control
4 over a hazardous substance shall be liable for **up to twenty-five percent of**
5 such reasonable and necessary costs incurred by the political subdivision or
6 volunteer fire protection association while securing an emergency situation or
7 cleaning up any hazardous substances. Such liability includes the cost of
8 materials and supplies actually used to secure the emergency situation. The
9 liability may also include the cost for contractual services which are not routinely

10 provided by the department or political subdivision or volunteer fire protection
11 association. Such liability shall not include the cost of normal services which
12 otherwise would have been provided. Such liability shall not include budgeted
13 administrative costs or the costs for duplicate services if multiple response teams
14 are requested by the department or political subdivision unless, in the opinion of
15 the department or political subdivision, duplication of service was required to
16 protect the public health and environment. No later than sixty days after the
17 completion of the cleanup of the release of a hazardous substance, the political
18 subdivision or volunteer fire protection association shall submit to the person
19 having control of the spilled hazardous substance an itemized statement of costs
20 provided by the political subdivision. The statement of costs shall include but not
21 be limited to an explanation of why the costs were reasonable and necessary. The
22 explanation shall describe how such costs were not duplicative, did not include
23 costs for normal services that would otherwise have been provided, and why
24 contractual services, if any, were utilized in the response to the emergency
25 situation. Response and cleanup costs are eligible for reimbursement if the initial
26 response and assessment to a release of a hazardous substance was based on best
27 practices and in a manner that any prudent political subdivision or volunteer fire
28 protection association would respond to a release of a hazardous substance. Such
29 response and cleanup costs may also include the costs of contractual services
30 which are not routinely provided by the department or political subdivision or
31 volunteer fire protection association. Such costs shall not include the costs of
32 normal services which otherwise would have been provided.

33 2. Full payment shall be made within thirty days of receipt of the cost
34 statement unless the person having control over the hazardous substance contests
35 the amount of the costs pursuant to this section. If the person having control
36 over the hazardous substance elects to contest the payment of such costs, such
37 person shall file an appeal with the director within thirty days of receipt of the
38 cost statement.

39 3. Upon receipt of such an appeal, the director shall notify the parties
40 involved of the appeal and collect such evidence from the parties involved as the
41 director deems necessary to make a determination of reasonable cleanup
42 costs. The burden of proof shall be on the political subdivision or volunteer fire
43 protection district to document and justify such costs allowed under subsection
44 1 of this section. Within sixty days of notification of the appeal, the director shall
45 notify the parties of his or her decision. The director shall direct the person

46 having control over a hazardous substance to pay those costs the director finds
47 to be reasonable and appropriate. The determination of the director shall become
48 final thirty days after receipt of the notice by the parties involved unless prior to
49 such date one of the involved parties files a petition for judicial review pursuant
50 to chapter 536, RSMo.

51 4. The political subdivision or volunteer fire protection association may
52 apply to the department for reimbursement from the hazardous waste fund
53 created in section 260.391 for the costs for which the person having control over
54 a hazardous substance shall be liable if the political subdivision or volunteer fire
55 protection association is able to demonstrate a need for immediate relief for such
56 costs and believes it will not receive prompt payment from the person having
57 control over a hazardous substance. When the liability owed to the political
58 subdivision or volunteer fire protection association by the person having control
59 over a hazardous substance is paid, the political subdivision or volunteer fire
60 protection association shall reimburse the department for any payment it has
61 received from the hazardous waste fund. Such reimbursement to a political
62 subdivision or volunteer fire protection association by the department shall be
63 paid back to the department by the political subdivision or volunteer fire
64 protection association within that time limit imposed by the department
65 notwithstanding failure of the person having control over a hazardous substance
66 to reimburse the political subdivision or volunteer fire protection association
67 within that time.

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