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ATTORNEY GENERAL'S STATEMENT

Attachment 1

7 Delaware Code, Chapter 63

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by

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1991 REPLACEMENT

*Including Legislation Enacted
by the 140th General
Assembly*

Annotated through 757 A.2d 1. For complete scope of annotations,
see Preface in Supplement to Volume 1.

MICHIE

CHARLOTTESVILLE, VIRGINIA
2000

§ 6205. Enforcement.

Day of violation. — Since subsection (a) of this section imposes civil penalties for each day of violation, and since a violation under § 6203 of this title requires both that there be a discharge of oil and that the discharge cause an incident, it is clear that any particular day properly can be considered a "day of violation" only if there is a finding that a discharge of oil occurred on that day and that the discharge caused an incident on that day; if either element is missing, then that particular day cannot properly be regarded as a "day of violation." In re Oriental Republic of Uru., 821 F. Supp. 946 (D. Del. 1993).

Penalties for discharge. — If the Delaware General Assembly sought to impose liability under § 6203 and subsection (a) of this section for each day during which oil was in the water or each day of an "incident," then it certainly could have drafted the Delaware Oil Pollution Liability Act so as to achieve such a result; however, the plain language of the Act unambiguously provides that liability for civil penalties is to be imposed under § 6203 and subsection (a) of this section only for each day during which a discharge of oil occurred. In re Oriental Republic of Uru., 821 F. Supp. 946 (D. Del. 1993).

Penalties for failure to remove. — The statement in § 6201 of this title that one of this chapter's purposes is "to require the prompt containment and removal of pollution" resulting from an illegal discharge is in reference to § 6204 of this title, which obviously encourages

prompt clean-up; accordingly, civil penalties may be imposed for days during which oil remains in the water, without any discharge occurring on that day, where the failure to promptly remove the oil pollution and the act of allowing the oil to remain in the water constitutes a violation of § 6204 of this title. In re Oriental Republic of Uru., 821 F. Supp. 946 (D. Del. 1993).

Any expenses incurred by the Secretary in removing oil pollution pursuant to § 6204 of this title are recoverable under subsection (c) of this section. In re Oriental Republic of Uru., 821 F. Supp. 946 (D. Del. 1993).

This chapter creates a powerful incentive structure, through § 6204 of this title and this section, which strongly encourages prompt clean-up of oil spills. First, § 6204 of this title and subsection (a) of this section together impose civil penalties for failure to comply with § 6204's requirement that the responsible party promptly undertake clean-up efforts. Second, in the event that the responsible party does not comply with § 6204 by failing to undertake prompt clean-up efforts, § 6204 and subsection (c) of this section together obligate the responsible party to reimburse the Secretary and any "affected" third party authorized by the Secretary to perform clean-up efforts for expenses incurred in connection with the Secretary's and said third parties' oil pollution removal efforts. In re Oriental Republic of Uru., 821 F. Supp. 946 (D. Del. 1993).

§ 6207. Damages; claimants.

Validity. — Subsection (a)(6) of this section is squarely in conflict with an established rule of maritime law, and, therefore, pursuant to the

supremacy clause of U.S. Const., Art. VI, the state law must yield. In re Oriental Republic Uru., 821 F. Supp. 950 (D. Del. 1993).

CHAPTER 63. HAZARDOUS WASTE MANAGEMENT

Subchapter I. Hazardous Waste

- Sec.
6302. Definitions.
6306. Generation and transportation of hazardous waste.
6309. Enforcement.

Subchapter II. Miscellaneous Provisions

- Sec.
6319. Waste-end assessments for persons generating, storing, treating and disposing of hazardous wastes.

Subchapter I. Hazardous Waste

§ 6302. Definitions.

The following words and phrases shall have the meaning ascribed to them in this chapter unless the context clearly indicates otherwise:

(13) "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such manner as not to constitute disposal of such hazardous wastes.

(70 Del. Laws, c. 240, § 1.)

Effect of amendments.

70 Del. Laws, c. 240, effective July 17, 1995, in (13), substituted "such manner" for "such a manner" and deleted the former second sentence.

As the rest of this section was not amended, it is not reprinted in this Supplement.

Vegetative waste and construction debris. — Vegetative waste and construction debris disposed of in trenches near development site were hazardous waste within the meaning of subdivision (7) of this section, even though it did not display hazardous characteristics and was not specifically listed in regulations as a hazardous substance, because its quantity, concentration, physical characteristics, or chemical characteristics posed a substantial present hazard to human health. Accordingly, defendant was liable for the cost of the emergency remediation under § 6308(4) of this chapter.

T.V. Spano Bldg. Corp. v. Department of Natural Resources & Env'tl. Control, Del. Supr., 628 A.2d 53 (1993).

Personal liability. — The General Assembly intended to impose personal liability under this chapter in appropriate circumstances on corporate officers who improperly dispose of hazardous waste. *T.V. Spano Bldg. Corp. v. Department of Natural Resources & Env'tl. Control, Del. Supr., 628 A.2d 53 (1993).*

To impose personal liability on a corporate officer, it is not enough that the officer knew of an improper disposal; rather, the officer must be shown to have been actively involved in the alleged violative activity. The state must show that the officer directed, ordered, ratified, approved, or consented to the improper disposal. *T.V. Spano Bldg. Corp. v. Department of Natural Resources & Env'tl. Control, Del. Supr., 628 A.2d 53 (1993).*

§ 6305. Regulations.

Vegetative waste and construction debris. — Vegetative waste and construction debris disposed of in trenches near development site were hazardous waste within the meaning of § 6302(7) of this chapter, even though it did not display hazardous characteristics and was not specifically listed in regulations as a hazardous substance, because its quantity, concen-

tration, physical characteristics, or chemical characteristics posed a substantial present hazard to human health. Accordingly, defendant was liable for the cost of the emergency remediation under § 6308(4) of this chapter. *T.V. Spano Bldg. Corp. v. Department of Natural Resources & Env'tl. Control, Del. Supr., 628 A.2d 53 (1993).*

§ 6306. Generation and transportation of hazardous waste.

(g) Any person transporting hazardous waste who owns, operates or utilizes a hazardous waste transfer facility for storage of in-transport hazardous waste shall do so in accordance with the Delaware Regulations Governing Hazardous Wastes. (62 Del. Laws, c. 412, § 3; 64 Del. Laws, c. 162, § 5; 66 Del. Laws, c. 140, § 2; 66 Del. Laws, c. 364, §§ 4, 5; 70 Del. Laws, c. 240, §§ 2, 3.)

Effect of amendments. — 70 Del. Laws, c. 240, effective July 17, 1995, rewrote (g); and deleted former (h) through (j).

As the rest of this section was not amended, it is not reprinted in this Supplement.

§ 6308. Imminent hazards.

Vegetative waste and construction debris. — Vegetative waste and construction debris disposed of in trenches near development site were hazardous waste within the meaning of § 6302(7) of this chapter, even though it did not display hazardous characteristics and was not specifically listed in regulations as a hazardous substance, because its quantity, concentration, physical characteristics, or chemical characteristics posed a substantial present hazard to human health. Accordingly, defendant was liable for the cost of the emergency remediation under subdivision (4) of this section. *T.V. Spano Bldg. Corp. v. Department of Natural Resources & Env'tl. Control, Del. Supr., 628 A.2d 53 (1993).*

Personal liability. — The General Assem-

bly intended to impose personal liability under this chapter in appropriate circumstances on corporate officers who improperly dispose of hazardous waste. *T.V. Spano Bldg. Corp. v. Department of Natural Resources & Env'tl. Control, Del. Supr., 628 A.2d 53 (1993).*

To impose personal liability on a corporate officer, it is not enough that the officer knew of an improper disposal; rather, the officer must be shown to have been actively involved in the alleged violative activity. The state must show that the officer directed, ordered, ratified, approved, or consented to the improper disposal. *T.V. Spano Bldg. Corp. v. Department of Natural Resources & Env'tl. Control, Del. Supr., 628 A.2d 53 (1993).*

§ 6309. Enforcement.

(f) Any person who, with criminal negligence with respect to the following: violates any provision of or fails to perform any duty imposed by this chapter, or who violates any provisions of or fails to perform any duty imposed by a rule, regulation, order or any facility permit adopted or issued under this chapter, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding 10,000, or imprisonment not exceeding 6 months, or both. The Superior Court shall have jurisdiction of offenses under this subsection.

(g) Any person who knowingly, with respect to the following: violates any provision of or fails to perform any duty imposed by this chapter, or who violates any provision of or fails to perform any duty imposed by a rule, regulation, order or any facility permit adopted or issued under this chapter, is guilty, if such violation causes the release of hazardous waste into the environment, of a misdemeanor and on conviction is subject to a fine not exceeding \$25,000, or imprisonment for not more than 1 year, or both. The Superior Court shall have jurisdiction of offenses under this subsection.

(h) Any person who knowingly commits any of the following offenses is guilty of a felony and on conviction is subject to a fine not exceeding \$50,000, or imprisonment not exceeding 2 years, or both:

(1) Dumping, discharging, abandoning or disposing into the environment, a hazardous waste in any place other than an authorized hazardous waste facility for which a current facility permit is in effect;

(2) Transporting for treatment, storage or disposal a hazardous waste to any place other than an authorized hazardous waste facility for which a current facility permit is in effect; or

(3) Authorizing, directing or participating in any offense listed in this subsection.

(i) Any person who knowingly with respect to the following: transports, treats, stores, exports or otherwise disposes of a hazardous waste in a manner that would constitute a violation under subsection (h) of this section and who knows at that time that the violation places another person in imminent danger of death or serious bodily injury is guilty of a felony and on conviction is subject to a fine not exceeding \$100,000, or imprisonment not exceeding 5

years, or both. For purposes of this subsection, in determination whether a person's state of mind is knowing and whether a person knew that the violation or conduct placed another person in imminent danger of death or serious bodily injury, the criteria provided under § 3008(f) of the Resource Conservation and Recovery Act (42 U.S.C. § 6928(f) as adopted in P.L. 99-499) shall apply.

(j) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan, manifest, label or other document filed or required to be maintained under this chapter, or under any transfer facility approval or permit, regulation or order issued under this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction be punished by a fine of not less than \$500 nor more than \$25,000, or by imprisonment for not more than 1 year, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than 2 years, or by both. The Superior Court shall have jurisdiction of offenses under this subsection.

(k) The terms used in this section which pertain to criminal violations shall have the same meanings as such terms are defined in Title 11. No person shall be prosecuted for criminal violations under this section if such person is exercising a right of appeal under this chapter with respect to a requirement which serves as the basis for the violation.

(l) Each day of violation as specified in any action pursuant to the above subsections shall constitute a separate violation.

(m) Whenever on the basis of any information the Secretary determines that there is or has been a release of hazardous waste into the environment from any facility, the Secretary may issue an order requiring corrective action or such other response measure (including corrective action beyond the facility boundary) as the Secretary deems necessary to protect human health or the environment or the Secretary may commence a civil action in the Superior Court or the Court of Chancery for appropriate relief, including a temporary or permanent injunction. Any order issued under this subsection may include a suspension or revocation of authorization to operate under this chapter, shall state with reasonable specificity the nature of the required corrective action or other response measure, and shall specify a time for compliance. If any person named in an order fails to comply with the order, the Secretary may assess, and such person shall be liable to the Department for, civil penalty in an amount not to exceed \$25,000 for each day of noncompliance with the order.

(n) Any expenses or civil penalties collected by the Department under this section are hereby appropriated to the Department to carry out the purposes of this chapter. (62 Del. Laws, c. 412, § 3; 64 Del. Laws, c. 162, § 10; 65 Del. Laws, c. 320, §§ 7, 8; 66 Del. Laws, c. 364, §§ 6-8; 69 Del. Laws, c. 366, §§ 2, 3; 70 Del. Laws, c. 186, § 1.)

Revisor's note. -- Section 4 of 69 Del. Laws, c. 366, provides: "§§ 6309(f)-(i) of this title shall apply to all such offenses committed, or alleged to have been committed on or after July 12, 1994. Subsection (f) as it was in effect prior to July 12, 1994 shall govern all offenses committed, or alleged to have been committed, before July 12, 1994. Offenses committed, or alleged to have been committed during a course of con-

duct covering a time period both before and after July 12, 1994 shall be governed by subsection (f) as it was in effect prior to July 12, 1994."

Section 5 of 69 Del. Laws, c. 366, provides: "Nothing in § 6309(f)-(i) of this title shall be deemed to preclude prosecution under any other provisions of the Delaware Code nor shall these sections be deemed to repeal any other

sections of the Delaware Code.”

Effect of amendments. — 69 Del. Laws, c. 366, effective July 12, 1994, rewrote (f); redesignated former (g) as (j) and former (h), (i) and

(j) as (l), (m) and (n), respectively; and inserted present (g), (h), (i) and (k).

As the rest of this section was not amended, it is not reprinted in this Supplement.

Subchapter II. Miscellaneous Provisions

§ 6319. Waste-end assessments for persons generating, storing, treating and disposing of hazardous wastes.

(c) The information reporting requirements imposed under this section, as set forth in the form prescribed by the Department, shall, beginning January 1, 1996, be reported to the Department annually, due March 1, for the preceding calendar year.

(h) The owner or operator of a hazardous waste transfer facility shall be assessed an annual fee, as established by the Department and approved by the General Assembly, for all waste stored at the facility not subject to the assessment provisions of this section. The timing of the assessment, payment and penalties shall be consistent with the requirements of this section.

(i) When calculating the amount of hazardous waste that is to be subject to any assessment under this section, if the person responsible for the assessment is involved with more than 1 type of hazardous waste being generated, treated, stored or disposed of, then the total amount of all the hazardous wastes being generated, treated, stored or disposed of by said person at any 1 site, shall be used to calculate the amount of the assessment.

(j) All of the requirements under this section that apply to persons who generate, treat, store or dispose of hazardous waste are in addition to and not in lieu of any other fees or requirements that must be complied with by said persons under any other statute, regulation, ordinance or permit condition.

(k) The Superior Court of the State shall have jurisdiction over actions to collect assessments and penalties under this section. (65 Del. Laws, c. 516, § 2; 68 Del. Laws, c. 86, §§ 5-7; 70 Del. Laws, c. 240, § 4; 70 Del. Laws, c. 324, § 1.)

Effect of amendments.

70 Del. Laws, c. 240, effective July 17, 1995, inserted present (h) and redesignated the remaining subsections accordingly.

70 Del. Laws, c. 324, effective Apr. 15, 1996,

in (c), rewrote the first sentence; and deleted the former second sentence.

As the rest of this section was not amended, it is not reprinted in this Supplement.

CHAPTER 64. DELAWARE SOLID WASTE AUTHORITY

Subchapter I. General Provisions

Sec.

6427. Industrial solid waste.

6432. Environmental study to be conducted before site selection and construction of any proposed resource recovery fa-

~~cility or any proposed waste incinerator; copies to be filed with the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.~~

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