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COMMITTEE REPORT

March 31, 2022

**H. 4999**

Introduced by Rep. Hiott

S. Printed 3/31/22--H.

Read the first time February 22, 2022.

**THE COMMITTEE ON AGRICULTURE, NATURAL**

**RESOURCES AND ENVIRONMENTAL AFFAIRS**

To whom was referred a Bill (H. 4999) to amend Section 44‑56‑200 Code of Laws of South Carolina, 1976, relating to hazardous waste cleanup, so as to provide standards for conducting certain cleanup, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

DAVID R. HIOTT for Committee.

**A** **BILL**

TO AMEND SECTION 44‑56‑200 CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO HAZARDOUS WASTE CLEANUP, SO AS TO PROVIDE STANDARDS FOR CONDUCTING CERTAIN CLEANUP, REMOVAL, REMEDIATION, OR OTHER RESPONSES; TO PROVIDE SITE‑SPECIFIC REMEDIATION STANDARDS; AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 44‑56‑200 of the 1976 Code is amended to read:

“Section 44‑56‑200. (A) For the purposes of this section:

(1) ‘Medium’ or ‘media’ includes the following portions of the environment:

(a) soil;

(b) surface water;

(c) sediments;

(d) ambient, noncontainerized air; and

(e) the saturated zone beneath surface soils commonly referred to as ‘groundwater’.

(2) ‘Owner’ does not include:

(a) a unit of state or local government that acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquired a title by virtue of its function as sovereign, including acquisitions made by a forfeited land commission pursuant to Chapter 59, Title 12. The exclusion provided pursuant to this item does not apply to any state or local government that voluntarily acquires a facility or has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a state or local government is subject to the provisions of this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity; or

(b) a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by:

(i) an act of God;

(ii) an act of war; or

(iii) an act or omission by a third party, if the person establishes by a preponderance of the evidence that he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance, in light of all relevant facts and circumstances and that he further took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions. Third party does not include:

(A) an employee or agent of the person; or

(B) one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, except where the sole contractual arrangement arose from a published tariff and acceptance for carriage by a common carrier by rail.

(3) ‘Remediation’ has the same meaning provided by Public Law 96‑510, 42 U.S.C. 9601, and may include a human health risk assessment process to estimate the nature and probability of adverse health effects in humans who may be exposed to chemicals in contaminated media.

(B) The Department of Health and Environmental Control is empowered to implement and enforce the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Public Law 96‑510), and subsequent amendments to Public Law 96‑510 as of the effective date of the amendments.

~~(B)~~(C)(1) Subject to the provisions of Section 107 of Public Law 96‑510 and its subsequent amendments which pursuant to this section are incorporated and adopted as the law of this State, the department is empowered to recover on behalf of the State all response costs expended from the Hazardous Waste Contingency Fund or from other sources, including specifically punitive damages in an amount at least equal to and not more than three times the amount of costs incurred by the State whether before or after the enactment of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, and its subsequent amendments.

(2) ~~For purposes of this section, ‘owner’ does not include:~~

~~(a)~~ ~~a unit of state or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign, including acquisitions made by a forfeited land commission pursuant to Chapter 59, Title 12. The exclusion provided under this paragraph shall not apply to any state or local government which voluntarily acquires a facility or has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a state or local government shall be subject to the provisions of this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity.~~

~~(b)~~ ~~a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by:~~

~~(i)~~ ~~an act of God;~~

~~(ii)~~ ~~an act of war;~~

~~(iii)~~ ~~an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (A) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (B) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions.~~

~~(3)~~ For purposes of this chapter, the provisions of the Superfund Recycling Equity Act, 42 U.S.C. Section 9627, shall apply.

(D) When conducting cleanup, removal, remediation, or any other response pursuant to this section, the Pollution Control Act, or regulations thereof, a person who proposes or is required to respond to the release of a pollutant, contaminant, or hazardous substance at a contaminated facility site must comply with one of the following standards:

(1) the unrestricted use standards applicable to each affected medium;

(2) the background standard, if the background standard exceeds the unrestricted use standards;

(3) a site‑specific remediation standard for any or all of the affected media; or

(4) any combination of remediation standards for affected media described in this subsection.

(E) Site‑specific remediation standards developed for each medium and authorized by this section shall include an evaluation of remediation standards based upon the present or currently planned future use of a site. Site‑specific remediation standards shall be developed in accordance with the following:

(1) for surface water, the site‑specific remediation standard shall be, or shall demonstrate compliance with, water quality standards adopted by the department;

(2) for a saturated zone or groundwater, the current and probable future use of the saturated zone or groundwater must first be identified, then site‑specific sources of contaminants and potential receptors must be identified. Potential receptors must be protected, controlled, or eliminated, whether the receptors are located on or off the site where the source of the contamination is located;

(3) natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by the appropriate scientific methods and shall be considered a site‑specific remediation standard;

(4) permits for facilities located at sites covered by any of the programs or requirements established pursuant to regulation shall contain conditions to avoid exceedances of the applicable groundwater standards adopted by the department due to the continued operation of any onsite facility;

(5) for soil, the soil shall be remediated to levels that are no longer a continuing source of groundwater contamination in excess of the site‑specific standards. Soil shall be remediated to unrestricted use standards on residential property with the following exceptions:

(a) for mixed‑use developments where ground level uses are nonresidential and all potential exposure to contaminated soil has been eliminated, the department may allow soil to remain on site in excess of unrestricted use standards; and

(b) if soil remediation is impractical because of preexisting structures or removal is impractical, then all areas of the real property where a person may come into contact with soil must be remediated to unrestricted use standards. All other areas of the real property engineering and institutional controls that are sufficient to protect public health, safety, and welfare and the environment must be implemented;

(6) if applicable, the potential for the human inhalation of contaminants from outdoor air and other site‑specific indoor air exposure pathways shall be considered. Site‑specific remediation standards also must protect against human exposure to contamination through the consumption of contaminated fish or wildlife and through the ingestion of contaminants in surface water or groundwater supplies;

(7) for known or suspected carcinogens, site‑specific remediation standards shall be established at exposures that represent an excess lifetime cancer risk of one in one million. The site‑specific remediation standard may depart from the one‑in‑one million risk level based on the criteria set out in 40 C.F.R. Section 300.430(e)(9). The cumulative excess lifetime cancer risk to an exposed individual shall not be greater than one in ten thousand based on the sum of carcinogenic risk posed by each contaminant present;

(8) for systemic toxicants, site‑specific remediation standards shall represent levels to which the human population, including sensitive subgroups, may be exposed without any adverse health effects during a lifetime or part of a lifetime. Site‑specific remediation standards for systemic toxicants shall incorporate an adequate margin of safety and shall take into account cases in which two or more systemic toxicants affect the same organ or organ system; and

(9) the site‑specific remediation standards for each medium shall be adequate to avoid foreseeable adverse effects to other media or the environment that are inconsistent with the risk‑based approach under this section.”

SECTION 2. This act takes effect upon approval by the Governor.

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