
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1359 Session of 2007

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MAY 24, 2007

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
MAY 24, 2007

AN ACT

1 Relating to the evaluation and cleanup of sites where certain
2 controlled substances may have been manufactured or stored;
3 imposing powers and duties on the Department of Environmental
4 Protection and the Department of Health; and prescribing
5 penalties.

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5 Section 1102. Effective date.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 CHAPTER 1

9 PRELIMINARY PROVISIONS

10 Section 101. Short title.

11 This act shall be known and may be cited as the Cleanup of
12 Illegal Drug Sites Act.

13 Section 102. Declaration of policy.

14 The purpose of this act is to provide a just, equitable and
15 practicable method, to be cumulative with and in addition to any
16 other remedy provided by law, whereby property that endangers
17 the life, safety or welfare of the general public or occupants
18 of the property because of toxic chemical contamination that may
19 result from illegal drug manufacturing may be required to be
20 decontaminated or vacated and secured against use.

21 Section 103. Definitions.

22 The following words and phrases when used in this act shall
23 have the meanings given to them in this section unless the
24 context clearly indicates otherwise:

25 "Department." The Department of Environmental Protection of
26 the Commonwealth.

27 "Illegal drug manufacturing site." Property on which there
28 is reasonable cause to suspect contamination with chemicals
29 associated with the manufacturing of a controlled substance and
30 where:

1 (2) A statement of the determination made by the primary
2 law enforcement agency that the site is an illegal drug
3 manufacturing site and the findings that formed the basis for
4 the determination.

5 (3) A citation to and short summary of the provisions of
6 section 304 which restrict transfer and occupancy of the site
7 until it is determined to be fit for use.

8 (4) Copies of the information furnished by the
9 department to the primary law enforcement agency under
10 section 308.

11 (c) Notice to occupants and users.--The notice required
12 under subsection (a) for the occupants and users of the property
13 shall be accomplished by the immediate posting of the property
14 with a notice that includes the location of the property, the
15 information described in subsection (b)(2) and (3) and a
16 statement that the property may pose a substantial risk of
17 physical harm to persons who occupy or use the property. The
18 posting shall not be removed without the authorization of the
19 department. For purposes of posting of the notice to the
20 occupants and users of the property required by this subsection,
21 the posting shall be made for property that is:

22 (1) A single family dwelling, at the main entryway of
23 the property.

24 (2) Other than a single family dwelling and for a hotel,
25 motel, public inn or similar place of public accommodation
26 that provides lodging, at the door of the unit that is the
27 site that constitutes the illegal drug manufacturing site.

28 (d) Notice to department.--The notice to the department
29 required under subsection (a) must include:

30 (1) The address of the property where the site is

1 located, including the apartment address or room number, if
2 applicable.

3 (2) A statement of the determination made by the primary
4 law enforcement agency that the site is an illegal drug
5 manufacturing site and the findings that formed the basis for
6 the determination.

7 (3) The name and mailing address of the person who owns
8 the property where the site is located.

9 (e) Other parties.--If a person other than the owner, such
10 as a property manager or rental agency, is authorized to let
11 others use or occupy property for which an owner has received a
12 notice under subsection (a) or is authorized to transfer, sell,
13 lease or rent the property to others, the owner of the property
14 shall communicate the substance of the notice to that person
15 immediately after receiving the notice.

16 Section 302. Restrictions on property.

17 (a) General rule.--Until determined to be fit for use under
18 section 306, the property for which a notice has been issued
19 under section 301(a) may not be transferred, sold, leased or
20 rented to another person except as provided in subsection (b),
21 and a person may not use or occupy the property at any time
22 after the property was posted with the notice required under
23 section 301(c) except as necessary for sampling, testing or
24 decontamination in accordance with this act. An oral or written
25 contract to transfer, sell, lease, rent or otherwise allow the
26 use of the property in violation of this section is voidable
27 between the parties at the option of the purchaser, transferee,
28 user, lessee or renter. This subsection does not:

29 (1) Make voidable a lease or rental agreement between
30 the property owner and the person who caused the property to

1 be contaminated and determined unfit for use.

2 (2) Impair obligations or duties required to be
3 performed on termination of a contract, as required by the
4 contract, such as payment of damages or return of refundable
5 deposits.

6 (b) Disclosure.--Notwithstanding subsection (a), property
7 under subsection (a) may be transferred or sold if full written
8 disclosure is made to the prospective transferee or purchaser
9 that the property has been determined to be an illegal drug
10 manufacturing site and the property has not been determined to
11 be fit for use. The disclosure is not considered to be part of
12 the transfer or sale document, however, and may not be recorded.
13 Except as set forth in paragraphs (1) and (2), disclosure shall
14 be accomplished using the form required under 68 Pa.C.S. §
15 7304(b) (relating to disclosure form). The following apply:

16 (1) If the property sale or transfer is pursuant to a
17 mortgage foreclosure or delinquent tax sale, disclosure shall
18 be provided in writing prior to the signing of a contract for
19 the sale or transfer.

20 (2) If the property transfer is pursuant to distribution
21 of an estate, disclosure shall be provided in writing prior
22 to the transfer.

23 (c) Subsequent sale or transfer.--A subsequent sale or
24 transfer of the property does not affect the applicability of
25 the restrictions under this section.

26 (d) Penalty.--

27 (1) A person who knowingly transfers, sells, leases or
28 rents property to another, knowingly allows another to use or
29 occupy property or, being the owner of property, knowingly
30 occupies or uses the property in violation of this section

commits a misdemeanor of the first degree.

(2) As used in this subsection, "knowingly" has the meaning given in 18 Pa.C.S. § 302(b)(2) (relating to general requirements of culpability).

(e) Affirmative defense.--It is an affirmative defense to a prosecution under subsection (d) for allowing another to use or occupy the property that the defendant or an agent of the defendant, after notice under section 301(a), filed an appropriate civil action to remove the user or occupier from the property for which the notice was received.

Section 303. Sampling and testing procedures.

(a) Owner.--If the owner of the property for which notice was received under section 301(b) desires to determine if the property is fit for use, the owner shall cause the site to be sampled and tested for the substances covered in regulations adopted under section 304 using the procedures and laboratory services specified under subsections (b) and (c). The property owner shall inform the laboratory used for sampling or testing under this subsection that the sampling and testing are related to property that has been determined to be an illegal drug manufacturing site.

(b) Procedures.--The department shall establish procedures for sampling and testing property that may have been an illegal drug manufacturing site.

(c) List of laboratories.--The department shall establish and maintain a list of laboratories in this Commonwealth that have notified the department that they have the capacity to perform the sampling and testing procedures and that they wish to be on the list maintained under this subsection. A laboratory may not be included on the list unless the laboratory agrees to

1 send the department a copy of test results related to properties
2 whose owners have informed the laboratory that the test results
3 are for property that has been determined to be an illegal drug
4 manufacturing site.

5 Section 304. Standards for determining fitness.

6 (a) General rule.--Property for which a notice was received
7 under section 301(b) is not fit for use if sampling and testing
8 of the property under section 303 shows the presence of
9 substances for which the department has set a limit under
10 subsection (b).

11 (b) Duties of Department of Health.--The Department of
12 Health shall annually submit a list of hazardous substances
13 associated with illegal drug sites to the department. The
14 department shall adopt regulations that set the limit for each
15 hazardous substance specified by the Department of Health for
16 purposes of determining whether the property for which a notice
17 was received under section 301(a) is fit for use. The department
18 may also determine whether there are other substances associated
19 with illegal drug manufacturing sites that may pose a
20 substantial risk of harm to persons who occupy or use the sites
21 or to public health and may adopt regulations that set limits
22 for those substances for the purposes of determining whether the
23 property for which notice was received under section 301(a) is
24 fit for use.

25 Section 305. Decontamination requirements.

26 (a) Department order.--The department shall order the owner
27 to decontaminate the property for which a notice has been issued
28 under section 301(a) pursuant to regulations promulgated by the
29 department under subsection (b).

30 (b) Decontamination regulations.--The department shall

1 promulgate regulations for decontamination of sites that are
2 determined to be unfit for use under section 301(a). The
3 department shall provide a copy of the regulations to any person
4 who requests a copy.

5 (c) Restitution.--In addition to any restitution required by
6 the court as a result of convictions resulting from the
7 operation of an illegal drug manufacturing site, the court may
8 also order restitution to be paid to the property owner that
9 incurred costs for decontamination of the site or loss of
10 income.

11 Section 306. Fitness for use.

12 (a) General rule.--Property for which a notice has been
13 issued under section 301(a) shall be determined by the
14 department to be fit for use if the owner certifies to the
15 department under penalty of 18 Pa.C.S. § 4904 (relating to
16 unsworn falsification to authorities) that any of the following
17 apply:

18 (1) Based on sampling and testing procedures established
19 by the department under section 303(b) and performed by
20 laboratories that are on the list maintained by the
21 department under section 303(b), the limits on substances
22 specified in regulations adopted under section 304 are not
23 exceeded on the property.

24 (2) If the property was ever sampled and tested under
25 section 303 and the test results showed the property to be
26 unfit for use under section 304, decontamination procedures
27 were performed in accordance with the guidelines established
28 under section 305(b) and the requirements of paragraph (1)
29 have been met.

30 (3) A court has held that the determination that the

property is an illegal drug manufacturing site was not made in compliance with section 301(a).

(b) List.--The department shall maintain a list of properties for which the department has received notice under section 301(a). When the department determines under subsection (a) that a property on the list is fit for use, the department shall remove the property from the list and notify the owner of the property that the property is fit for use. The department shall give a copy of the list maintained under this subsection to any person who requests the list.

Section 307. Securing the property.

The owner of the property for which a notice was received under section 301(b) shall ensure that the property is vacated and secured against use.

Section 308. Department-furnished information.

The department shall furnish the following information to a primary law enforcement agency conducting an investigation under section 301:

(1) The standards contained in regulations adopted under section 304 that determine whether the property is fit for use.

(2) The sampling and testing procedures established under section 304(b) and a copy of the list of laboratories maintained under section 303(c) that must be used for determining whether the property is fit for use.

(3) The regulations for decontamination established by the department under section 305(b).

CHAPTER 11

MISCELLANEOUS PROVISIONS

Section 1101. Regulations.

1 (a) Promulgation.--Notwithstanding any other provision of
2 law to the contrary and in order to facilitate the prompt
3 implementation of this act, regulations promulgated by the
4 department during the two years following the effective date of
5 this act shall be deemed temporary regulations which shall
6 expire no later than three years following the effective date of
7 this act or upon promulgation of regulations as generally
8 provided by law. The temporary regulations shall not be subject
9 to:

10 (1) Sections 201 through 205 of the act of July 31, 1968
11 (P.L.769, No.240), referred to as the Commonwealth Documents
12 Law.

13 (2) The act of June 25, 1982 (P.L.633, No.181), known as
14 the Regulatory Review Act.

15 (b) Expiration.--The authority provided to the department to
16 adopt temporary regulations in subsection (a) shall expire two
17 years from the effective date of this section. Regulations
18 adopted after the two-year period shall be promulgated as
19 provided by law.

20 Section 1102. Effective date.

21 This act shall take effect in 60 days.