

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2807 Session of
1990

INTRODUCED BY FOX, DeLUCA, SEMMEL, ANGSTADT, NAHILL, BILLOW,
KASUNIC, MELIO, McHALE, DIETTERICK, ITKIN, CIVERA, ADOLPH,
RICHARDSON, TRELLO AND JAMES, JULY 1, 1990

REFERRED TO COMMITTEE ON CONSERVATION, JULY 1, 1990

AN ACT

1 Prohibiting discharges of oil and similar substances into the
2 waters of this Commonwealth; requiring reporting of
3 discharges; providing for responses to discharges;
4 establishing liability for discharges; and providing for
5 penalties.

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

8 Section 1. Short title.

9 This act shall be known and may be cited as the Oil Spill
10 Response and Liability Act.

11 Section 2. Definitions.

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

15 "Department." The Department of Environmental Resources of
16 the Commonwealth.

17 "Discharge." Any spilling, leaking, pumping, pouring,
18 emitting, emptying or dumping of more than 50 gallons of oil,
19 unless authorized by a valid permit issued under Federal law or

1 any laws of this Commonwealth.

2 "Facility." Any development or installation that deals in,
3 stores or handles oil.

4 "Oil." Oil of any kind and in any form, including, but not
5 limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed
6 with other wastes, crude oils and all other liquid hydrocarbons
7 regardless of specific gravity.

8 "Person." Includes a corporation, a partnership and an
9 association, as well as a natural individual.

10 "Response action." Any cleanup, abatement, containment,
11 removal and disposal operations conducted in response to a
12 discharge.

13 "Responsible party." Any person causing or permitting a
14 discharge of oil into Commonwealth waters, or owning or
15 operating any facility, vessel or vehicle from which there is a
16 discharge of oil into Commonwealth waters.

17 "Secretary." The Secretary of Environmental Resources of the
18 Commonwealth.

19 "Vehicle." Any conveyance in or on which persons or property
20 may be carried, except a vessel.

21 "Vessel." Any conveyance in which persons or property may be
22 carried on water. The term includes a barge or tug.

23 Section 3. Discharges prohibited.

24 No person shall discharge oil into the waters of this
25 Commonwealth.

26 Section 4. Reporting of discharge.

27 (a) Notification.--A responsible party shall notify the
28 department of any discharge immediately upon learning of the
29 discharge.

30 (b) Civil penalties for nonreporting.--In addition to

1 proceeding under any other remedy available at law or in equity
2 for a violation of a provision of this act or the department's
3 rules and regulations, the department may assess a civil penalty
4 against any responsible party who fails to notify the department
5 as required by subsection (a). No penalty shall be assessed
6 where the responsible party reports the discharge to the Federal
7 authorities designated pursuant to section 311 of the Federal
8 Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. § 1321).
9 The amount of the penalty shall not exceed \$10,000 a day for
10 each violation. In determining the amount of the penalty, the
11 department shall consider all relevant factors, including the
12 amount of oil discharged and the environmental damage resulting
13 from the failure to notify.

14 (c) Notice of penalty.--When the department proposes to
15 assess a civil penalty, it shall inform the responsible person
16 of the proposed amount of the penalty.

17 (d) Disposition.--The responsible party charged with the
18 penalty under subsection (b) shall have 30 days to pay the
19 proposed penalty in full or, if the person wishes to contest the
20 amount of the penalty or the fact of the violation, forward the
21 proposed amount of the penalty to the department within the 30-
22 day period for placement in an escrow account with the State
23 Treasurer or any Pennsylvania bank, or post an appeal bond to
24 the department within 30 days in the amount of the proposed
25 penalty, provided that the bond is executed by a surety licensed
26 to do business in this Commonwealth and is satisfactory to the
27 department.

28 (e) Administrative hearing.--The department shall grant an
29 administrative hearing to any person who has requested one and
30 has complied with subsection (d). The hearing shall be conducted

1 in accordance with 2 Pa.C.S. Ch. 5 Subch. A (relating to
2 practice and procedure of Commonwealth agencies).

3 (f) Further action.--If, through administrative or final
4 judicial review of the proposed penalty, it is determined that
5 no violation occurred or that the amount of the penalty should
6 be reduced, the department shall within 30 days remit the
7 appropriate amount to the responsible party with any interest
8 accumulated by the escrow deposit.

9 (g) Waiver.--Failure to forward the money or the appeal bond
10 required under subsection (d) shall result in a waiver of all
11 legal rights to contest the violation or the amount of the
12 penalty.

13 (h) Assessment.--The amount assessed after an administrative
14 hearing or final judicial review, or after waiver of an
15 administrative hearing, shall be payable to the Commonwealth of
16 Pennsylvania and shall be collectible in any manner provided by
17 law for the collection of debts. If a person liable to pay this
18 penalty neglects or refuses to pay the penalty after demand, the
19 amount, together with any interest and any costs that may
20 accrue, shall constitute a judgment in favor of the Commonwealth
21 upon the property of such person from the date it has been
22 entered and docketed on record by the prothonotary of the county
23 where the property is situated. The department may at any time
24 transmit to the prothonotaries of the respective counties
25 certified copies of all such judgments, and it shall be the duty
26 of each prothonotary to enter and docket them of record in his
27 office, and to index the same as judgments are indexed, without
28 requiring the payment of costs as a condition precedent to the
29 entry thereof.

30 Section 5. Response to discharge.

1 (a) General rule.--In the event of a discharge, a
2 responsible party shall immediately undertake all reasonable
3 response actions, subject to applicable Federal and State
4 requirements.

5 (b) Rights of department.--If a responsible party cannot be
6 identified, is unwilling or, in the opinion of the secretary, is
7 unable to conduct reasonable response actions, or if, in the
8 opinion of the secretary, the response actions of the
9 responsible party are unsatisfactory or inadequate, the
10 department may undertake reasonable response actions or contract
11 with any public agency or private person to perform such
12 response actions.

13 Section 6. Liability for discharge.

14 (a) Strict liability.--A responsible person shall be
15 strictly liable:

16 (1) to the Commonwealth for the costs of reasonable
17 response actions taken under section 5(b);

18 (2) to the Commonwealth for damage to real and personal
19 property owned by the Commonwealth resulting from the
20 discharge;

21 (3) to the Commonwealth for injury to, and destruction
22 or loss of, the Commonwealth's natural resources resulting
23 from the discharge;

24 (4) to any political subdivision for damage to real and
25 personal property damage owned by the political subdivision
26 resulting from the discharge; and

27 (5) to any person for damage to his real or personal
28 property resulting from the discharge.

29 (b) Joint and several liability.--If more than one person is
30 found to be a responsible party with respect to a certain

1 discharge, liability under this section shall be joint and
2 several.

3 (c) Defenses.--It shall be a defense to liability under this
4 section that the discharge was caused by one or more of the
5 following:

6 (1) An act of God.

7 (2) An act of war, terrorism or insurrection.

8 (3) An act or omission of another party.

9 Section 7. Penalties.

10 (a) Gross negligence; willful conduct.--Any responsible
11 party found to have caused a discharge through gross negligence
12 or willful conduct shall be ordered to pay a civil penalty of
13 not more than \$250,000.

14 (b) Penalties not exclusive.--Penalties assessed by a court
15 under this section shall be in addition to any other penalties
16 assessed or damages recovered.

17 Section 8. Limitation on action.

18 The provisions of any other act to the contrary
19 notwithstanding, actions to recover damages and/or assess
20 penalties under this act may be commenced at any time within a
21 period of three years from the date the discharge occurred.

22 Section 9. Existing rights and remedies preserved.

23 It is hereby declared to be the purpose of this act to
24 provide additional and cumulative remedies in order to prevent,
25 abate and impose liability for the pollution caused by
26 discharges of oil into Commonwealth waters. Nothing contained in
27 this act shall in any way abridge or alter rights of action or
28 remedies now or hereafter existing in equity or under the common
29 law or statutory law, criminal or civil, nor shall any provision
30 in this act, or any act done by virtue of this act, be construed

1 as estopping the Commonwealth, persons or political
2 subdivisions, in the exercise of their rights under the common
3 law or statutory law or in equity, from proceeding in courts of
4 law or equity to suppress nuisances, or to abate pollution, or
5 from enforcing common law or statutory rights.

6 Section 10. Rules and regulations.

7 The department shall have the power, and its duty shall be,
8 to make, alter, amend or rescind rules and regulations to carry
9 out the provisions of this act.

10 Section 11. Effective date.

11 This act shall take effect in 60 days.