

AN ACT TO AMEND CHAPTER 91, TITLE 7 OF THE DELAWARE CODE RELATING TO THE DELAWARE HAZARDOUS SUBSTANCE CLEANUP ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 9103, Title 7 of the Delaware Code by making insertions as shown by underlining as follows and by re-numbering the other definitions accordingly:

(12) “Golf course” means a commercial golf course whether operated publicly or privately, excluding miniature golf establishments and stand-alone golf driving ranges that are not attached to or part of a commercial golf course.

(16) “Orchard” means any area of land intentionally planted and devoted to the commercial cultivation of fruit trees, excluding the growing of fruit trees solely for private use.

Section 2. Amend § 9103(21)c., Title 7 of the Delaware Code by making insertions as shown by underlining as follows:

c. The appropriate application of fertilizer and pesticide; provided, however, that the application of fertilizer and pesticide on golf courses or orchards shall also be subject to the provisions of § 9120A. of this subchapter;

Section 3. Amend subchapter I, chapter 91, Title 7 of the Delaware Code by making insertions as shown by underlining as follows:

§ 9120A. Golf Courses and Orchards

(a) The requirements of this section apply to facilities that have operated as golf courses or orchards under the circumstances set forth herein.

(b) When a golf course or orchard ceases operation and seeks to change to any other land use, except an agricultural use, the provisions of this subchapter and the regulations promulgated

pursuant thereto shall apply; provided, however, such provisions shall not apply to any natural resource damage assessment or restoration of the facility.

(c) The Department shall oversee any remedy required to be conducted at a former golf course or orchard pursuant to this section. The person performing the remedy shall enter into a settlement agreement with the Department. The settlement agreement shall provide for the Department's oversight of the remedy and payment of the Department's oversight costs in accordance with the provisions of this subchapter and the regulations promulgated pursuant thereto.

(d) Whenever a person fails or refuses to enter into a settlement agreement with the Department as required by this section, the Department may perform, or require the performance of, a remedy at the facility and recover its costs in accordance with § 9107 or § 9109 of this subchapter.

(e) Notwithstanding § 9105 of this subchapter, any person who seeks to purchase or otherwise take title to a golf course or orchard and to change the use of the facility to other than an agricultural use, and who otherwise complies with all of the requirements of this section, shall not be subject to liability with respect to the existing environmental condition of the facility as of the date such person enters into a settlement agreement with the Department as required by subsection (c) of this section. Such person shall, however, be responsible for performing any required remedy or for paying the costs associated with any remedy performed at the facility pursuant to this section.

Section 4. The provisions of this Act shall be given prospective effect only and shall not apply to any former golf course or orchard that has changed to a non-agricultural use prior to this Act's enactment into law.

SYNOPSIS

This Act is intended to protect human health. It is predicated on the fact that while fertilizers and pesticides appropriately applied on land used for agricultural purposes may not constitute a threat to health or the environment, the residual remnants of such applications may pose an unacceptable risk when the land use changes to one whereby human contact is more prevalent and sustained.

As a result, the Act makes golf courses and orchards that seek to change their land use to anything other than an agricultural use subject to the provisions of the Delaware Hazardous Substance Cleanup Act. Specifically, the Act requires that any person seeking such a change in land use must enter into an agreement with DNREC and must conduct a remedy at the facility. It also provides certain liability protections for prospective owners of such a facility. Current and former facility owners and operators are not subject to liability for the appropriate application of fertilizer and pesticide.

Section 1 of the Act adds definitions for the terms "golf course" and "orchard".

Section 2 of the Act modifies the exception contained in the definition of "release" to reference the provisions of newly created § 9120A.

Section 3 of the Act provides that any golf course or orchard that appropriately applied fertilizer and pesticide must perform a remedy if its use changes to a non-agricultural land use. It also provides certain liability protections for prospective owners.

Section 4 of the Act establishes that the provisions of this legislation are to be applied prospectively such that they are inapplicable to golf courses and orchards that have changed to a non-agricultural use prior to the Act's enactment into law.